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VIA U.S.P.S. EXPRESS MAIL

City of Long Beach, California
Attn: Mayor, City Council, and City Manager
444 W. Ocean Blvd.
Long Beach, CA 90802

Re: *Americans with Disabilities Act of 1990 (Amended 2008)*
James v. City of Costa Mesa, *et al.*
SACV 10-00402ALG(MLGx)

Dear Mayor, City Council and City Manager:

This office represents disabled individuals in *James v. City of Costa Mesa, et al.* U.S. District Court case SACV-10-00402 ALG(MLGx). Recently, our office was contacted by patients in Long Beach concerned about the implementation of your city ordinance 10-0007 regulating medical marijuana collectives.

Title II of the Americans with Disabilities Act of 1990 prohibits municipal regulations that effectively prevent access to public services by qualified disabled individuals. California Health and Safety Code §§ 11362.5 and 11362.7 provide for disabled and/or seriously ill people. Likewise, the enactment language of Long Beach ordinance 10-0007 reflects similar concern and refers to the disabled and seriously ill.

There are a number of provisions included in ordinance 10-0007 that have already or soon will deny access to medication taken by disabled or seriously ill individuals who are members of medical marijuana cooperatives based in Long Beach. Without access to their medication, these people will effectively be denied access to public services. These individuals are members of collectives in Long Beach that are subject to the regulation your city is in the process of implementing. Enforcement of the ordinance whether it results in the closing of healthcare providers voluntarily because of their mistaken belief that the ordinance is valid or closure of cooperatives through the city's efforts, will cause the disabled and seriously ill to suffer damages.

A number of the cooperatives in Long Beach have been providing medication for hundreds or thousands of disabled individuals that we believe are protected by the Americans with Disabilities Act. In its handbook for cities, the U.S. Justice Department notes:

> *"City governments are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification. For example, a municipal ordinance banning animals from city health clinics may need to be modified to allow a blind individual who uses a service animal to bring the animal to a mental health counseling session. 28 C.F.R. § 35.130(b)(7)."*

Many of the Long Beach medical marijuana collectives have, for several years, operated to provide medication for people who, among other things, suffer from terminal illnesses, use wheelchairs or who are blind. The *only* reason these collectives exist is for the benefit of their seriously ill and/or disabled patient members. *See* Cal. H&S 11362.5 and 11362.7.

The ordinance passed by your city government has not properly considered the needs of these patients working cooperatively for their disabled and seriously ill members. For example, the costs associated with collective activities are borne by member patients who often live within limited budgets. By imposing a non-refundable license fee subject to a lottery that requires these patient groups to pay close to $15,000.00 with no assurance they will be allowed to continue their cooperatives borders on the kind of intentional and outrageous conduct that warrants punitive damages. Cities around the country that are tempted to engage in the same kind of behavior need to know that targeting disabled and terminally ill individuals in this way cannot be tolerated in a civilized society.

Since ordinance 10-0007 includes a number of provisions we believe are unlawful under Title II or state law, for any medical marijuana collective that has existed and provided medication and services to disabled individuals on or before the effective enforcement date of 10-0007 we are recommending compliance under protest. For instance, many of these patient groups cannot afford the nearly $15,000.00 business application fee that is nearly ten (10) times the highest cost imposed by almost every other city. If cooperatives in Long Beach that our disabled clients are members of cannot afford the fee, we are recommending that they pay a fee equal to Long Beach's application fee for physician offices or similar small healthcare providers. Should the city reject such applications, this letter will serve as notice to Long Beach that such rejections are going to cause disabled and seriously ill individuals to suffer damages. Likewise, we are notifying Long Beach that should the *full* non-refundable "lottery participation" fee be paid, that fee is being paid in

protest and only in an effort to preserve the rights of disabled patient members to access their medication and related services until claims can be heard in court. Although we may seek to have a number of the ordinance's provisions declared "unlawful" or "invalid," we will most certainly seek to have the majority of the application fees returned. We will ask the court to assess what level of damages the city should pay to the disabled and seriously ill members who were forced to pay additional fees or render additional cooperative services to account for these likely unlawful and overly burdensome city assessments.

A number of the patients we have spoken with are members of collectives that are now facing costs associated with relocation, expensive build-outs and related expenses. First, many patients with limited mobility are going to be severely affected by the relocation of their meeting and business locations. If such relocation is tied to a *stated* rather than *true and provable* important city interest, significant provision, transportation and medication cost increases will be imposed on patient members. More importantly, relocation will force some seriously handicapped people to forgo visits. As noted in the Justice Department's guidance, if the city can provide regulations for existing collectives that will not harm their disabled patient members while still providing for *valid* city needs, it is appropriate and necessary for the city to make such changes. It follows that should the city fail to announce appropriate changes, we will seek to recover the increased costs imposed on patient members related to relocations made in an effort to protect patient members. It will then be up to the courts to determine what amounts, if any, should be paid by taxpayers if the city's decision does not carefully consider the ADA before cooperatives relocate or close.

Because the city has already given "training" courses on its ordinance and has announced zoning and cooperative relocation requirements, it is necessary for the city to immediately clarify its requirements and provide for careful and clear analysis on a case by case basis for each already existing patient cooperative location. Some cooperatives are already planning location changes in an effort to preserve at least some form of access for hundreds or thousands of patients. Long Beach can certainly reduce potential liability notwithstanding already announced zoning policies and rules if it clarifies its position and thereafter provides thoughtful analysis and consideration for these existing cooperative locations.

Long Beach can modify 10-0007 in respect to existing medical marijuana cooperatives that have operated to provide for their disabled members. Requirements for existing cooperatives must consider each cooperative on a case by case basis unless the city is willing to accept and approve applications submitted by all existing cooperatives operating in compliance with state law. Should this office be contacted by collectives that have applications rejected, if a zoning variance request is deemed appropriate because provisions related to existing collectives were not made, upon planning commission or city council decisions regarding variance requests, applicants will be urged to seek reimbursement for legal costs and other variance related fees.

In addition to the zoning and application fee provisions, we were unable to find anything even remotely similar to a requirement making landlords liable for the activities of medical marijuana collectives in any other healthcare business license application process implemented by Long Beach. Accordingly, should landowners be unwilling to enter into what is clearly an inappropriate and likely unlawful commitment, we are recommending that all license applicants note such refusal and that they proceed with application submission. Also, the portion of 10-0007 requiring managing cooperative members to certify they will be responsible for the criminal activities or civil liability responsibilities of third parties is almost certainly an improper and illegal exercise of governmental power. Should a managing member of a collective/cooperative execute this type of certification on behalf of a cooperative, we will seek to invalidate the city's requirement and have such a certification declared null and void. Again, this applies to applications made by cooperatives or collectives that have as members any disabled or seriously ill individuals this office represents.

Although we have specifically addressed several of the problems with 10-0007, there are other parts of the statute that are likely unlawful and that will cause disabled and seriously ill patients to suffer damages. As noted below, we would like to work with the city toward positive resolution of these issues. However, if the city believes that it can overcome the provisions of the ADA and the rights of these seriously disabled individuals, we are more than willing to present the ordinance provisions and related issues to the courts.

If it is the city's position that the Americans with Disabilities Act of 1990 as amended 2008 is not applicable, the city should consider that it has implemented its ordinance solely to regulate an activity that can only provide for disabled or seriously ill individuals. It is anomalous to specifically provide for collectives/cooperatives if the city believes the possession, use and/or distribution of medical marijuana contravenes state or federal law. To the contrary, the city has explicitly expressed its position in regard to medical marijuana legality by passing and implementing its ordinance. If this were not the city's position, it is almost certainly contravening a long line of cases prohibiting such legislation. Unlike cities that have banned cooperatives, Long Beach has recognized and started implementing medical marijuana cooperative legislation. Taking the position that the ADA does not apply will almost certainly be a position rejected by the courts in any circumstance because the city has passed and started effectuating 10-0007.

We believe that individuals engaged in activities that contravene H&S 11362.5 and 11362.7 should be swiftly prosecuted. Just as rogue traditional pharmacies should be subject to prosecution related to the improper distribution of dangerous drugs such as Oxycontin and amphetamines, those people who skirt provisions and attempt to subvert laws aimed at compassionately providing for the disabled and terminally ill should be subject to harsh penalties. However, medical marijuana

collectives operating in accordance with state law and that work cooperatively to provide medication and services for their members should be lauded for their work rather than subjected to treatment by cities that effectively harms patients. These cooperative patients' willingness to provide medication for the disabled while medical marijuana patients struggle to get past the stereotypes and preconceived notions of the past can be likened to previous efforts in this country to overcome similar civil rights and social difficulties.

We have helped numbers of healthcare organizations implement regulatory compliance programs that work to balance the rights of patients with the operating needs of those entities. Whether hospitals, health plans or large healthcare product suppliers, these organizations have benefited from thoughtful systems and planning that have helped them reduce risk and that provide for their patient's privacy rights. Rather than expend money in court and seek judicial remedies, the taxpayers are better served by carefully crafted regulations that properly balance an organization's needs with valid patient rights. We invite the city to work *with us* to achieve balanced goals. To that end, if you would please contact our office to discuss regulatory compliance services, we would be interested in working with the city.

We believe that the City of Long Beach wants to recognize its disabled and seriously ill citizens. While parts of 10-0007 make important strides in the right direction, there are changes that need to be made. We believe the city, the cooperatives and patients can work together to save taxpayer dollars, protect public safety and ensure safe and effective treatments for disabled or seriously ill citizens.

Very truly yours,

Matthew Pappas

MSP:jd