



City of Gilroy

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Thomas J. Haglund
CITY ADMINISTRATOR

November 11, 2009

Neil J. Forrest, Director
Batzi Kuburovich, Director
MediLeaf
*Db*a MediLeaf Medical Cannabis
Collective Dispensary
*Db*a UR Health & Wellness Center
1321-B First Street
Gilroy, CA 95020

Goyko G. Kuburovich
MediLeaf
16430 Monterey Road, Ste. 5
Morgan Hill, CA 95037

Mike and Kulwinder Kaur Atkar
2467 Murillo Avenue
San Jose, CA 95148

Re: Cease and Desist Order
1321-B First Street, APN: 790-43-017

To Whom It May Concern:

The City of Gilroy ("City") is informed that one or more of the persons or entities addressed above, and/or persons or entities under their control and/or acting in concert with them, is operating a medical marijuana dispensary and/or otherwise selling marijuana at 1321-B First Street in the City of Gilroy ("Premises"), in violation of federal law, the Gilroy Municipal Code, and the Gilroy Zoning Ordinance. The sale of marijuana and the operation of a marijuana dispensary in the City constitute violations of Sections 13.2 and 13.44(a) of the Gilroy Municipal Code because such activities are being conducted without a business license. A properly issued, lawful business license is required of for-profit and non-profit businesses and entities in the City of Gilroy. In addition, such activities violate Sections 53.20 and 53.30 of the Gilroy Zoning Ordinance because they are not permitted uses under any City zoning district. As such, these uses constitute a public nuisance (Zoning Ordinance section 53.30), and no exceptions have been granted or apply. Thus, the persons or entities addressed above, including the owners of the property upon which the unlawful use is conducted, and/or persons or entities under their control and/or acting in concert with them, are hereby ordered to IMMEDIATELY CEASE AND DESIST from selling marijuana or otherwise operating a medical marijuana dispensary at the Premises or at any other location in the City, and will be held liable if such use is not ceased.

As MediLeaf's representatives are well aware, the operation of a medical marijuana dispensary and the sale of marijuana are not permitted under the City's Zoning Ordinance. The City rejected MediLeaf's application for a business license because the proposed use is not a lawful use according to federal law as required by the business license ordinance nor does it meet the zoning requirements of the City (see letters from the City attached hereto), and the City

returned MediLeaf's September 14, 2009 application for a conditional use permit and refused to process it for the same reason. (See City letter attached hereto.) In addition, the City Council gave serious consideration to a proposed medical marijuana ordinance that would have permitted such uses, but ultimately decided not to adopt the ordinance at its October 12, 2009 City Council meeting, which MediLeaf representatives participated in. Therefore, such a business remains unlawful both under the City's business license ordinance and under the City's zoning ordinance.

If you fail to cease and desist these operations immediately, then the City will be free to take any and all legal actions necessary to enforce your compliance with the law, including but not limited to issuing administrative citations against you, seeking administrative penalties for each day you continue to operate without a license, issuing criminal citations, and seeking a court order for injunctive relief to prevent further violations.

Yours truly,



Thomas J. Haglund
City Administrator

Encls.

cc: Denise Turner, Chief of Police
Linda A. Callon, City Attorney
Kristi Abrams, Development Center Manager

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September 24, 2009

James Suner
2950 Soma Way
Gilroy, CA 95020

Re: Conditional Use Permit Application (“CUP”)
Location: 7101 Monterey Road, Gilroy
APN #799-10-060
Applicant: Medi Leaf Corp. -- Batzi Kuburovich and Neil Forrest

Dear Mr. Suner:

The City is returning to you the original above-referenced CUP application that you turned into the City on September 14, 2009, a copy of which has been kept by the City, and is returning to you the original check for City fees in the amount of \$4,185.00. The City cannot process this application at this time because the City Zoning Ordinance does not have a use category that recognizes and regulates a medical marijuana dispensary. In addition, the Gilroy City Code does not allow operation of any business that does not show compliance with all federal, state and local laws and ordinances. [See the business license ordinance at Gilroy City Code section 13.33(a)] The proposed use does not comply with federal law or with the City’s zoning ordinance.

As to the zoning issue, the City Council understands that this is a newly proposed use that must be considered within the zoning and land use context for locational criteria and other standards and limits on development to apply to such a use to protect the health, safety and welfare of the users and the surrounding areas. On August 3, 2009, the City Council directed staff to propose a new zoning ordinance that would permit and regulate the use of a medical marijuana dispensary within the City, and that work is underway. (See City Council agenda packet for September 14, 2009.) The City Council at that meeting, which you attended and

James Suner
September 24, 2009

appeared on behalf of the CUP applicants, directed staff to bring back regulatory proposals for its review, and a special meeting is now scheduled for October 12, 2009 at 6 p.m.

In addition, if such an ordinance is adopted, the City will also amend its business license ordinance to be consistent with the regulatory scheme for such a use.

As we discussed at the September 14, 2009 Council meeting, the City at this time does not have a process under which to proceed with an application for a use or a requested permit that is not consistent with the zoning ordinance. This letter is to inform you that this application is therefore incomplete, and cannot be made complete by any action of the applicants. A change in both the zoning ordinance to include such a use with its accompanying regulations and a change in the Gilroy City Code allowing such a use to be licensed must be approved by the City Council and take effect prior to processing any application for a medical marijuana dispensary in Gilroy.

This processing denial is without prejudice, and your clients are free to file for the appropriate land use application and a business license when and if the City Council adopts the relevant ordinances to allow this use.

Please call with any questions.

Very truly yours,

BERLINER COHEN

LINDA A. CALLON
City Attorney, City of Gilroy
E-Mail: linda.callon@berliner.com

LAC:cem

cc: Tom Haglund, City Administrator
Kristi Abrams, Development Center Manager/Building Official

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August 24, 2009

James K. Roberts, Esq.
Roberts & Elliot
Ten Almaden Boulevard, Suite 500
San Jose, CA 95113

VIA EMAIL & U.S. MAIL

Re: Medileaf – Medical Marijuana Dispensary

Dear Mr. Roberts:

We are in receipt of your letter of August 10, 2009 regarding the business license application of Medileaf. In your letter you asked that we clarify the status of your client's application based on a statement made by the Police Chief in the August 3, 2009 City Council study session that the business license application had been denied, and statements in the City's previous letters to you.

In my July 16, 2009 letter, I stated that the application was not approved, and I cited Section 13.44(a) of the Gilroy City Code, which requires that an applicant for a proposed business "*shall show compliance with all federal, state and local laws and ordinances which apply to each,*" noting that the Section appeared to prevent issuance of a business license to your client due to federal law's prohibition of such a use. I invited your analysis as to the federal law issue.

Though you commented on the issue, we did not receive any input from you that would convince us that your client's proposed activities will comply with federal law. Moreover, we have found nothing in the law, including the Compassionate Use Act, the Medical Marijuana Program and in the cases you cite, that *requires* a City to permit a medical marijuana dispensary within its city limits. We have no doubt that Section 13.44(a) constitutes a legitimate use of the City's police powers under current, applicable state law and remains a valid requirement of the City of Gilroy until amended or repealed by the City Council.

James K. Roberts, Esq.
August 24, 2009

Therefore, in order to once again clarify the situation at your request, the City under its own code has denied your client's application since there was no showing of compliance with federal law. Please note that the denial of your client's application is without prejudice to your client's right to refile its application for a business license if there is a change in the law.

As you are aware from the City Council's direction to City staff at the August 3, 2009 study session, we are expecting that the City will in the near future consider a new ordinance permitting and regulating the use of a medical marijuana dispensary within the City limits, and if so adopted, will also amend the business license ordinance to be consistent with the regulatory ordinance.

I hope this clarifies the City's position on this matter. Please let me know if you have any further questions or comments.

Sincerely,

BERLINER COHEN



LINDA A. CALLON

E-Mail: linda.callon@berliner.com

LAC:cds

cc: Police Chief Denise Turner
Sergeant Kurt Ashley
Kristi Abrams, Community Development Department
Tom Haglund, City Administrator

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July 16, 2009

James K. Roberts
Roberts & Elliot
Ten Almaden Boulevard, Suite 500
San Jose, CA 95113

Re: Medileaf – Medical Cannabis Dispensary

Dear Mr. Roberts:

Our client, the City of Gilroy, is in receipt of your letters of June 29, 2009 and July 2, 2009 as well as your client's business license application dated June 8, 2009. To clarify any confusion due to having two applications submitted, Sergeant Kurt Ashley of the Gilroy Police Department upon receipt of your letter of June 29, 2009, called your client Goyko Kuburovich and told him that the June 8, 2009 application was not approved for the same reason that the May 8, 2009 application was not approved. Both applications were submitted without any information that would have allowed the City to determine the legality of the proposed operation of Medileaf Cannabis Collective Dispensary. However, you provided some information for our review with your June 29, 2009 letter, and we are in the process of reviewing that information.

As you may be aware, the Gilroy Business License Application Form requires approval by numerous City departments. Pursuant to Sec. 13.43 of the Gilroy City Code regarding business licenses, those departments are asked to clear the license applications in part to verify that the proposed uses of property meet City laws and policies, as well as State and federal laws administered by each department. The police department has a vital role in such approvals; they both clear the application and, if necessary, impose conditions and requirements for any such approval related to their role in maintaining the peace and safety of our community.

A medical marijuana collective is not a typical business and the City of Gilroy has not been asked to approve one in the past. Obviously, distribution of marijuana to persons other than

James K. Roberts
July 16, 2009

qualified patients or caregivers is a criminal act under both state and federal law, and any distribution is against federal law. Section 13.44(a) of the Gilroy City Code states that:

All business, trades, professions and callings shall show compliance with all federal, state and local laws and ordinances which apply to each and shall obtain clearances set forth in section 13.43, prior to issuance of a business license.

It is difficult for the City to reconcile approval of Medileaf's application with the above-cited provision of the Gilroy City Code, and the burden of proof is on the applicant. The City, at a minimum, needs to assure itself that your client's proposed operation will operate under the legal requirements of the Compassionate Use Act, the Medical Marijuana Program set forth in California's Health and Safety Code, and the Attorney General's guidelines. In addition, we have concerns as to whether the City or its officers and employees would have any liability under federal law if this license is issued. We request your analysis as to how the City can issue this license in light of federal law on the subject.

As you know, consideration of any permission to allow these facilities is a matter that requires careful consideration. The City Council at this time is scheduled to conduct a general study session with the Police Department on medical marijuana distribution in the City on August 3, 2009, from 6pm to 7 pm in the City of Gilroy City Council Chambers, and of course the public may attend. Please check the City's website or with the City Clerk's office to confirm that date and time later this month.

Meanwhile, we are reviewing the materials you have provided us and are trying to discern if your rules and regulations for the dispensary at least meet State law dictates. If you have further information that would aid in that effort, please do forward it to the City.

Thank you for your cooperation.

Very truly yours,

BERLINER COHEN



LINDA A. CALLON
City Attorney, City of Gilroy
E-Mail: linda.callon@berliner.com

LAC:cem

cc: Police Chief Denise Turner
Sergeant Kurt Ashley
Kristi Abrams, Development Center Manager
Tom Haglund, City Administrator



Gilroy Police Department

City of Gilroy

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DENISE J. TURNER
Chief of Police

June 16, 2009

Goyko Kuburovich
Neil Forrest
2135 Darnis Circle
Morgan Hill, CA 95037

Re: Medileaf - Medical Cannabis Collective Dispensary

Mr. Kuburovich and Mr. Forrest:

On May 8, 2009, you submitted a request for approval for a business license for Medileaf – Medical Cannabis Collective Dispensary. After considering your written request and the information you provided to me in our follow-up meeting, we find that you have not submitted enough information to show that your proposed business would meet state legal standards. As a result, we cannot approve your business license.

Under California Health and Safety Code, Section 11362.775, “[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients...who associate...in order collectively or cooperatively to cultivate marijuana for medical purposes” are not subject to criminal sanctions for such activity. California’s Attorney general has interpreted this statute as allowing only “statutory cooperatives” or “collectives” for purposes of providing medical marijuana.

According to the Attorney General, a “statutory cooperative” must file articles of incorporation and conduct its business for the mutual benefit of its members. Cooperatives must be “democratically controlled” and must not be organized “to make a profit for themselves.” According to the Attorney General, “cooperatives should not purchase marijuana from or sell to non-members; instead they should only provide a means for facilitating or coordinating transactions between members.”

The Attorney General has similarly opined that a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. Like a cooperative, the collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

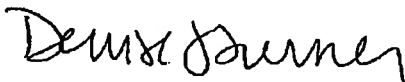
State law allows only patients and primary caregivers to grow, cultivate and possess marijuana. The legal definition for a primary caregiver is a person who has consistently

Medileaf – Medical Cannabis Collective Dispensary
June 16, 2009
Page 2

assumed responsibility for a patient's care "independent of any assistance in taking medical marijuana" (People v. Mentch, 45 Cal. 4th 274, 283 (2008)). Clearly, you could not be a primary caregiver for all of the proposed members of the enterprise. Similarly, you indicated that you would receive your marijuana only from "certified growers". I have no information that California provides for any "certification" of marijuana growers, but even with such certification (if it exists), if you cannot show that such proposed growers are legitimate members (either patients or primary caregivers) of the collective or cooperative, then we believe your proposed business would not meet the legal requirements of California's Health and Safety Code. In fact, the very term "Collective Dispensary" indicates that your proposed business may be operated unlawfully; the Attorney General has made clear that "dispensaries...are not recognized under the law."

Based on your application and our follow-up discussion, I have not received any information showing that your "Collective Dispensary" would operate legally under state law. As a result, we cannot approve of your application for a business license for Medileaf – Medical Cannabis Collective Dispensary. If you have any questions regarding the above, please contact Sgt. Kurt Ashley at 846-0521.

Sincerely,



Denise J. Turner
Chief of Police

DT/nb