Day Law Group, P.C.
ATTORNEYS AT LAW

Ross A. Day*
Matthew Swihart†

* LICENSED IN OREGON AND WASHINGTON
† LICENSED IN OREGON AND FLORIDA

May 4, 2015

via electronic mail (adam.crawfords@state.or.us) *only*

Senator Ginny Burdick and Representative Ann Lininger
Co-Chairs, Measure 91 Implementation Committee
900 Court Street NE, Room 347
Salem, Oregon 97301

RE: -16 Amendments to Senate Bill 844

Co-Chairs Burdick and Lininger:

This letter is in regards to the -16 Amendments to Senate Bill 844. I want to thank you and the other members of the Joint Committee on Implementing Measure 91 for all of the hard work you have put in on making Ballot Measure 91 (2014) work. I have been able to attend all of the committee's hearings to date. Unfortunately I will not be able to attend tonight's hearing. Accordingly, I would like to submit these comments on the -16 Amendments to Senate Bill 844.

I understand the purpose of the -16 amendments is provide "local option" for cities and counties to effectively "zone out" medical marijuana dispensaries or processing sites. As a matter of public policy, I think this is an incredibly bad idea. Medicinal marijuana is, by definition, medicinal. Allowing cities and counties to "zone out" medicinal marijuana processing sites and dispensaries will deny patients in those communities access to medicine. I simply cannot understand how allowing local governments to deny patients access to medicine is a good public policy.

Public policy aside, Section 32a of the -16 amendments raises more questions than they provide answers:

1. Many local governments have enacted extensions of the moratoriums allowed by Senate Bill 1531 (2014). Many other local governments (i.e city of Phoenix, city of Aumsville, city of Ontario) have enacted ordinances that effectively prohibit the location of dispensaries or grow sites within their city limits. Does Section 32a require these local governments to "re-enact" these ordinances? Or, in the alternative, does Section 32a allow these ordinances to stay in effect, notwithstanding the fact the local governments had not provided the text of these ordinances to the Oregon Health Authority, as required by Section 32a.

2. As noted above, many local governments have enacted ordinances that effectively prohibit the location of dispensaries and grow sites within their jurisdiction. Although the ordinances are not outright prohibitions, the purpose of the ordinances are to prohibit the location of grow sites and dispensaries within the city or county's limits. If a local government enacts an ordinance (such as Ordinance 465(2015) adopted by the city of Aumsville) that effectively prohibits the location of grow sites and/or dispensaries, do the requirements of Section 32a apply?

Section 32b of the -16 amendments poses substantial problems to medicinal marijuana dispensaries and/or processing sites. This section of the -16 amendments purports to grandfather in dispensaries that were registered with the Oregon Health Authority prior to May 1st, 2015.

The exception to the grandfather provision is that a dispensary whose registration is revoked by the OHA, and then is re-established, would lose grandfather protection of Section 32b.

There are at least two problems with Section 32b of the -16 amendments:

1. The grandfather clause would only apply to dispensaries registered with the OHA prior to May 1st, 2015. Of course, Senate Bill 1531(2014) allowed local governments to enact moratoriums which must expire by May 1st, 2015. Accordingly, in many communities, this grandfather clause would only protect dispensaries registered prior to the passage of Senate Bill 1531(2014). At a minimum, if the committee wants to move forward with the "local option" contained in the -16 amendments, the grandfather clause should be moved forward until January of 2016 to allow dispensaries to be registered by the OHA between May 1st, 2015 and December 31st, 2015.

2. The grandfather clause does not protect dispensaries whose registration was revoked by the OHA, and then reinstated. This provision of Section 32b of the -16 amendments is particularly troubling. I can easily foresee a scenario where local law enforcement "raids" a dispensary, <u>alleges</u> various violations of law, reports those alleged violations to the OHA who then revokes a dispensary's license, and once the allegations are proven untrue, reinstates the registration. Under Section 32b, the dispensary would no longer be protected by the grandfather provision of Section 32b. Again, if the committee wants to move forward with the -16 amendments, Section 32b should be amended to only apply to dispensaries whose registration is permanently revoked by OHA.

<u>THE ISSUE OF 'LOCAL CONTROL'</u>

It is crystal clear the purpose of the -16 amendments is to placate the cities and counties cries for "local control".

I cannot help but be amused by the cries for 'local control' after the passage of Ballot Measure 91 (2014).

In 2004, the voters of Oregon passed Ballot Measure 37, a landmark property rights measure that protected property owners from the practice of down-zoning. I was intimately involved in the drafting, passage and defense of Measure 37.

When Measure 37 passed, many rural local governments anxiously passed local ordinances to ease the processing of Measure 37 claims. Many urban local governments (i.e. the cities of Portland and Eugene) passed local ordinances that made the filing of Measure 37 claims incredibly difficult, if not impossible.

In the 2005 legislative session, cries for 'local control' with the implementation of Measure 37 were heard throughout the halls of the Capital building. 'Local control', as it related to Measure 37, meant giving local governments the opportunity to "opt out" of Measure 37 altogether. Those who opposed local control claimed the law was passed by Oregonians and should be equally applied across the state (a position I strongly agreed with). I suspect those who opposed 'local control' in the context of Measure 37 are the same people who now <u>support</u> the concept of 'local control' when it comes to the regulation of marijuana in Oregon.

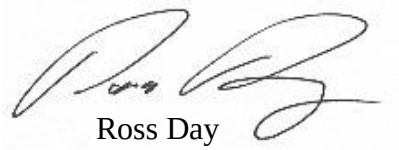
Many of the same arguments being made for 'local control' under Measure 91 (and to an equal extent, medicinal marijuana) are the same arguments for 'local control' made under Measure 37: local governments are the ones who have to deal with the costs of Measure 37, communities should have the right to determine the development and character of their neighborhoods, etc.

The point is that the beauty of 'local control' is in the eye of the beholder. That is a poor way, however, to create public policy. The fact is that the impetus behind 'local control' as it pertains to marijuana is not a desire to <u>control</u> marijuana (medicinal or recreational), but instead <u>prohibit</u> marijuana, much the same way 'local control', as it related to Measure 37, meant prohibiting Measure 37 claims in certain localities.

If local governments want to control marijuana, they should be allowed to enact reasonable time, place and manner restrictions, and nothing more.

Thank you for taking the time to consider my concerns.

Best regards,



Ross Day

DAY LAW GROUP, PC
15055 SW SEQUOIA PARKWAY, SUITE 170, PORTLAND, OREGON 97224 • T: 503.747.2705 • F: 503.624.2599 • W: WWW.DAYLAWPC.COM