U.S. Department of Justice

United States Attorney
Northern District of California

Melinda Haag
United States Attorney

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

(415) 436-7200
FAX:(415) 436-7234

February 1, 2011

John A. Russo, Esq.
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, California 94612

Dear Mr. Russo:

I write in response to your letter dated January 14, 2011 seeking guidance from the Attorney General regarding the City of Oakland Medical Cannabis Cultivation Ordinance. The U.S. Department of Justice is familiar with the City's solicitation of applications for permits to operate "industrial cannabis cultivation and manufacturing facilities" pursuant to Oakland Ordinance No. 13033 (Oakland Ordinance). I have consulted with the Attorney General and the Deputy Attorney General about the Oakland Ordinance. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such facilities.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21 Section 841 making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21 Section 856 making it

unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21 Section 846 making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may hkewise be utilized. The govemment may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies regardhig those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. hidividuals who elect to operate "industrial cannabis cultivation and manufacturing facilities" will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. Potential actions the Department is considering include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains fumly committed to enforcing the CSA in all states.

I hope this letter assists the City of Oakland and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,

Melinda Haag
United States Attomey
Northern District of Califomia

cc: Kamala D. Harris, Attomey General of the State of Califomia
Nancy E. O'Malley, Alameda County District Attomey