

Memorandum

City of Las Vegas Office of the City Attorney

To: Carolyn Goodman, Mayor
From: Bryan Scott, Assistant City Attorney
CC: Brad Jerbic, City Attorney
Betsy Fretwell, City Manager
Luann D. Holmes, Acting City Clerk



Date: March 3, 2015
Re: Required Abstention--Medical Marijuana Establishments items 44-55 during the March 4, 2015 City Council Meeting.

Mayor Goodman:

You inquired as to whether you should abstain from considering items related to the approval of medical marijuana establishments' special use permits and/or compliance permits at the City Council meeting scheduled for March 4, 2015. You indicated that your son is a principal in an entity that received approval from the City Council on October 29, 2014 for a medical marijuana establishment within the City of Las Vegas, item number 36, SUP-55275 and item number 37, DIR-56427.

NRS 281A.420(3) provides as follows:

"3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer *shall not vote upon* or advocate the passage or failure of, but may otherwise participate in the consideration of, *a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:*

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's significant pecuniary interest; or
- (c) *The public officer's commitment in a private capacity to the interests of another person.*"

NRS 281A.065 defines what the term "commitment in a private capacity of others as follows:

"Commitment in a private capacity" defined. "Commitment in a private capacity," with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

1. Who is the spouse or domestic partner of the public officer or employee;
2. Who is a member of the household of the public officer or employee;

Submitted after final agenda

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3. Who is related to the public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;

4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;

5. With whom the public officer or employee has a substantial and continuing business relationship; or

6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subsections 1 to 5, inclusive.”

In light of the above referenced statutes, it is the conclusion of the City Attorney’s Office that you should disclose the factual circumstances surrounding your potential conflicts on the record and abstain from the discussions and votes on all items requesting land use approval and/or compliance permit approval for any proposed medical marijuana establishments scheduled for hearings during the City Council meeting to be held on March 4, 2015. Your independence of judgment on any item related to proposed medical marijuana establishments is presumed to be compromised on all such matters since your son, as a principal of a group applying for a medical marijuana establishment with the City of Las Vegas, received approval of a medical marijuana establishment, when a very limited number of medical marijuana establishments authorized by the state of Nevada are available in the City of Las Vegas. A person could argue that because your son’s group received approval of a medical marijuana establishment in the City of Vegas, that your independence of judgment as to whether any additional competitors or suppliers should be approved is compromised.

If any of the above-referenced items are abeyed, tabled or withdrawn during the City Council meeting, you may vote on the motion to abey, table or withdraw the item as abeyance, withdrawal or tabling motions are not substantive motions. If any of those items come back to the City Council for rehearing, you will again need to disclose your conflicts and abstain from voting.

For your information, because I have issued this opinion you directing you to abstain from voting on items 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 the number of votes necessary to pass the items will be reduced by operation law based upon the provisions of NRS 281A.420(5) and NRS 241.0355(2).

NRS 281A.420(5) provides as follows:

“5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that the public officer will abstain from voting because of the requirements of this section, **the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.**”

NRS 241.0355(2) provides as follows:

“NRS 241.0355 Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum.

1. A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this subsection, a public body may not count an abstention as a vote in favor of an action.

2. In a county whose population is 45,000 or more, the provisions of subsection 5 of NRS 281A.420 do not apply to a public body that is required to be composed of elected officials only, unless before abstaining from the vote, the member of the public body receives and discloses the opinion of the legal counsel authorized by law to provide legal advice to the public body that the abstention is required pursuant to NRS 281A.420. The opinion of counsel must be in writing and set forth with specificity the factual circumstances and analysis leading to that conclusion.”

Regarding your abstention, the above-referenced statutes reduce the number of persons voting on the items during the city council meeting to six. The number of votes necessary to pass any motion for the remaining council members is four.

If you have any additional questions regarding any of the above, please feel free to contact me at ext. 6629.

City of Las Vegas
Office of City Clerk
495 South Main Street, 2nd Floor
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐

I SUPPORT
this Request

☒

I OPPOSE
this Request

Please use available blank space on card for your comments.

SUP-55256

City Council Meeting of **03/04/2015**

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Submitted after final agenda

Date 2-24-2015 Item 50