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CITY COUNCIL

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Councilman Kevin Flynn's Key Messages on CB 523

"Quiet Period" following denial or withdrawal of a marijuana store application

1. The needs and desires process is cumbersome and difficult for neighborhoods; they do not get timely notification and lack resources compared to the preparedness on the part of applicants, so if neighborhoods prevail, they should not be made to go through it again so soon.

2. In a liquor licensing process, there has long been a two-year quiet period if the director finds there is no need or desire in the neighborhood for another store. This is a gaping hole in the process that we overlooked when we decided last year to subject marijuana stores to the needs and desires process that liquor stores face. A finding of no need or desire in a neighborhood has to have a shelf life, and right now, a new application can be filed the day after a denial. That's not right.

3. This bill provides for the same two-year waiting period, but within a 1,000-foot radius if a marijuana application is denied. The distance for liquor stores is 500 feet.

4. The reasons for the different measurements are several, and one actually works to the benefit of the losing applicant. First, our marijuana code already uses 1,000 feet as the distance from prohibited locations such as schools, day care centers and substance abuse treatment centers, whereas the liquor code uses 500 feet. We need to keep the marijuana code provisions consistent with itself, and not introduce confusion between the two

5. But more importantly for the losing applicant, the 1,000-foot radius preserves its right to reapply after the waiting is up, guaranteeing that no competitor can come in and claim that area beforehand. That's because our code also requires a 1,000-foot separation between marijuana stores, and the quiet radius will thus prevent a competitor from coming in nearby while the losing applicant is waiting it out.

6. The bill also provides a one-year waiting period for the applicant and its specific location in the event it withdraws from the process after a hearing is set but before a final decision is made. The intent of this bill is to provide relief to neighborhoods from having to repeatedly organize, petition and testify. That intent is defeated if applicants can withdraw before denial, avoid the quiet period and make the neighborhoods repeat their all-volunteer petitioning efforts just a short time later. It is patently unfair

to game the system in a way that would repeatedly tax the resources of volunteer neighborhood groups and businesses.

7. In this case, there is no 1,000-foot radius. The one-year wait applies only to the specific location. And it applies only if the withdrawal occurs after the director triggers the neighborhood's requirement to petition and respond by setting a hearing. If an applicant withdraws prior to a hearing being set, there is no waiting period.

8. My bill exempts any pending applications remaining from the May 1, 2016, lifting of the moratorium. Preliminary data from EXL shows that seven remain. Only four locations have been denied licenses following a needs and desires hearing, and there are no post-May1, 2016, applications still pending within 1,000 feet of those four. So no current applicant's rights are infringed upon by my proposal.

9. My bill was presented to INC's ZAP committee on April 25, and it voted 27-0 with one abstention to support it.