

Testimony of Wayne Turner for the Council of the District of Columbia Committee on Health

RE: B 20-128 - the Medical Marijuana Cultivation Center Act of 2013; and
B 20-30 - the Medicaid Marijuana Cultivation Center and Dispensary Location
Restriction Amendment Act of 2013

March 20, 2013

Members of the Committee, please accept this written testimony on the above captioned bills and include it in the public record.

My name is Wayne Turner. I am health law attorney here in Washington DC and a proud graduate of UDC's David A. Clarke School of Law. For more than two decades I have focused on healthcare access and quality for low income and medically vulnerable populations in. I am longtime resident of Ward Six and was the sponsor and principal organizer for DC's medical marijuana Initiative 59. I also served as the caregiver for my late partner, Steve Michael, who died from AIDS in 1998.

When Steve spent his last few months of life suffering terribly from AIDS wasting syndrome, and when other therapies proved ineffective, Steve reluctantly turned to medical marijuana, and found some relief. We had no choice but to turn to the underground, black market to obtain medical marijuana. Soon, some patients and caregivers will hopefully soon have an opportunity to obtain high grade medical cannabis to ease their suffering that is safe and affordable.

It has been a long journey to be on the verge of fully implementing DC's medical marijuana law. However, I am deeply concerned that this Council is going in the wrong direction, and is putting unfounded fears and misconceptions ahead of facts and the needs of patients across the District.

I strongly oppose the proposed legislation before you today and urge you to reconsider imposing undue and irresponsible restrictions on the District's nascent medical marijuana program. Adding further restrictions on the location of dispensaries and cultivation centers is unnecessary and will ultimately harm seriously ill patients by limiting access to therapies that may ease their suffering.

1. Restrictions on cultivation centers and dispensaries are unnecessary

The proposals before you would restrict the number of medical marijuana cultivation centers per Ward, and would ban them from certain retail districts. These restrictions are unnecessary and only feed and exacerbate the misperception and misunderstanding of the District's medical marijuana program. Medical marijuana dispensaries are not like bars or strip clubs. Under the law passed unanimously by this Council, they will operate like pharmacies, are regulated by the DC Department of Health, and are subject to tight regulations and inventory control procedures, like pharmacies. Cultivation centers are not large scale industrial operations. They are not trash transfer stations. Under DC law, cultivation centers are small, wholesale greenhouses that supply dispensaries.

Under DC law, cultivation centers are small-scale, low profile operations. (DC Code § 7-1671.06(f). By law, they are limited to no more than 95 plants. (DC Code § 7-1671.06(e)(2). These are not large industrial enterprises. They require just a few thousand square feet. There is no foot traffic of patrons going in and out of cultivation centers. The sole customers of cultivation centers are the handful of licensed dispensaries. Medical marijuana users will at no time have access to cultivation centers. Ingestion of medical marijuana products in cultivation centers and dispensaries remains prohibited under District law. Violations of these provisions could result in criminal charges and the loss of their licensing. DC Code § 7-1671.08).

Cultivation centers will have minimal-to-no impact on the surrounding community. By law there is no signage or displays allowed. Under the regulations, they are required to have sophisticated ventilation systems with scrubbers, and waste disposal must be in accordance the District's sustainability goals and other existing standards. Residents in the surrounding neighborhood will not even know that they are there.

These proposed restrictions do nothing to address questions or concerns, but instead reinforces misinformation and misguided opposition by some.

2. Restrictions on cultivation centers and dispensaries will limit patient access

The District approach to medical marijuana has been cautious. Congress has prevented us from protecting patients and providers from prosecution and assuring that seriously and terminally ill individuals have safe and affordable access to medical marijuana. Officials charged with implementing Medical marijuana in the District – from the Department of Health, the Office of the Attorney General, the Department of Consumer and Regulatory Affairs, and the DC Department of the Environment should be commended for their hard work and good faith, reasoned efforts.

However, the restrictions on the cultivation centers would limit the availability of medical cannabis for otherwise qualified patients. The Council is preparing to do what the Congress did not do – nullify DC's medical marijuana program. If no cultivation centers are permitted to operate, then there is no medical marijuana available for patients.

People with AIDS, cancer, and other serious or terminal illnesses will have no other option but to obtain marijuana from open air drug markets. The very reason we fought for this program for so many years is to protect those patients and their caregivers from the dangers of buying marijuana on the street.

Unlike the medical marijuana grown in regulated cultivation centers subject to strict quality control procedures and testing, street marijuana is often laced with other drugs, pesticides and other chemicals, as well as mold and mildew spores that can do serious damage to someone with an already compromised immune system.

3. Concerns regarding overconcentration of medical marijuana facilities can be addressed in less burdensome ways

It is understandable that some communities may be concerned by an overconcentration of medical marijuana facilities. However, the Council has failed to take appropriate steps to address those concerns.

Currently, cultivation centers are limited to areas of the District zoned for industrial and manufacturing uses. As it so happens, the many of manufacturing and industrial areas in the District are located in Ward 5. The zoning requirement for cultivation centers is nowhere in the law passed by the Council; nor was it included in any version of the regulations which went through four rounds of public notice and comment. The regulations were reviewed by this Council and allowed to go into effect. However, the decision to limit cultivation centers to industrial areas was made by DCRA. It was promulgated, not through the formal rulemaking process, but as a requirement for cultivation center license applications.

The Council, as the legislative branch of DC government, has ample authority to overturn that decision. If overconcentration in Ward 5 is an issue, the Council could enact legislation allowing cultivation centers areas other than those zoned for industrial uses (M). Cultivation centers could be permitted to operate in other non-residential, commercial zones, subject to the other existing requirements such as ANC notification and comment.

In fact, DCRA officials admit that their decision to limit cultivation centers to industrial zones was by way of analogy. As mentioned above, under DC law cultivation centers are small, low profile greenhouses – not large scale industrial operations. There is no doubt that suitable locations that meet other requirements could be found in all 8 Wards of the District.

Note that the zoning decision was by DCRA, and was not made by the Zoning Commission. The Zoning Commission remains one of the vestiges of the pre-Home Rule government. It was created in 1920 and includes the National Park Service and the Architect of the Capitol as voting members. It is an independent, quasi-judicial agency whose decisions cannot be overturned by the Council.

Again, under the law, dispensaries are not like bars or strip clubs. Dispensaries operated and regulated like pharmacies by the DC Department of Health. Cultivation centers are not large scale industrial operations. They are small-scale nurseries or greenhouses that are off-limits to the general public and which supply the dispensaries.

There is no doubt that those who have raised issues and concerns regarding medical marijuana facilities should have those concerns addressed. However, the DC Council should address those fears with facts. I urge you to protect seriously ill patients in the District of Columbia and reject this ill-conceived legislation.

Thank you.

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