

BALLOT TITLE AND SUMMARY

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The Measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the City quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

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5 JEREMY COLTHARP and EDITH FRAZIER
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7
8 IN THE UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 JEREMY COLTHARP, an
individual,

12 EDITH FRAZIER, an individual,

13 *Plaintiffs;*

14 vs.

15 LARRY HERRERA, in only his
16 official capacity as City Clerk for the
City of Long Beach, and DOES 1-5;

17 *Defendants.*

CASE NO.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

FEDERAL JURISDICTION INVOKED
PURSUANT TO 28 U.S.C. §1331,
§1983, AND §1367

18
19 **INTRODUCTION**

20 1. Plaintiffs Jeremy Coltharp and Edith Frazier bring this as-applied
21 constitutional challenge to defend and vindicate every voter's fundamental right to
22 express his or her political beliefs regarding proposed ballot measures.

23 2. Plaintiffs ask the Court to declare that California Elections Code §105
24 is *unconstitutional*, for that statute forced Defendant Herrera not to count the
25 lawfully executed signatures of Ms. Frazier and other City of Long Beach voters
26 who changed their voter-registration address *after* they signed Mr. Coltharp's
27 proposed ballot measure (the "Ballot Measure").

28 3. Furthermore, Defendant Herrera refused to count the lawfully executed

1 signatures of other voters who had signed the Petition, in violation of federal and
2 state law.

3 4. As a result, Defendant Herrera refused to count **97 percent** of the
4 43,159 signatures collected by Mr. Coltharp. In so doing, Defendant Herrera
5 blocked the Ballot Measure from qualifying for a *special*¹ election.

6 5. Plaintiffs ask that Defendant Herrera be ordered to *count all 43,159*
7 *signatures* that were lawfully executed by voters who supported the Ballot
8 Measure. In this manner, Defendant Herrera will properly determine whether Mr.
9 Coltharp submitted the required number of signatures to qualify the Ballot Measure
10 for a special election.

11 6. Alternatively, Plaintiffs ask that Defendant Herrera be ordered to place
12 the Ballot Measure on the City of Long Beach's next regularly scheduled election
13 (April 8, 2014) – because it is *undisputed* that Mr. Coltharp has submitted the
14 required number of signatures to qualify the Ballot Measure for that election.

15 THE PARTIES

16 7. Plaintiffs Jeremy Coltharp and Edith Frazier live in, and are registered
17 to vote in, the City of Long Beach (the “City”). Mr. Coltharp proposed the ballot
18 measure at issue, and both he and Ms. Frazier signed a petition in support of that
19 ballot measure.

20 8. Defendant Larry Herrera, in his official capacity as City Clerk, serves
21 as the City's chief elections officer; and administers and enforces the Elections
22 Code with respect to the City's elections.²

23
24 ¹ If held as a *standalone* election, a special election called for a ballot measure must be held
25 within 88 to 103 days after the election has been ordered; if held as a *consolidated* election, that
26 election may be held within 180 days after the election has been ordered. See Elections Code
27 §§1405(a) & (a)(1).

28 ² Plaintiffs do not know the true names and capacities of Defendants DOES 1 through 5,
and therefore sue those Defendants by fictitious names. Based on his information and belief,
Plaintiffs allege that each of the fictitiously named Defendants is in some manner responsible for
the actions described in this Complaint. When the true identities and capacities of those
fictitiously named Defendants are determined, Plaintiffs will seek leave to amend this Complaint
to insert those identities and capacities.

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JURISDICTION AND VENUE

9. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28 U.S.C. §1331 (federal-question jurisdiction), 28 U.S.C. §1983 (jurisdiction for federal civil-rights violations), and 28 U.S.C. §1367 (supplemental jurisdiction). The Court is a proper venue for this action, for Defendant Herrera performs the duties of his office within the Central District of California.

STATEMENT OF FACTS

General Background: California Initiative Law

10. The California Constitution (art. ii §1) confers on voters the right to propose and enact legislation through ballot measures (initiatives).

11. If a proposed ballot measure has been signed by at least **15 percent** of its registered voters, the City must either (a) enact that ballot measure into law, or (b) call a *special* election asking the voters to decide whether to enact that ballot measure into law.³

12. If a proposed ballot measure has been signed by at least **10 percent** of its registered voters, the City must either (a) enact that ballot measure into law, (b) call a *special* election asking the voters to decide whether to enact that ballot measure into law, or (c) place that ballot measure on the next *regularly scheduled* City election.⁴ It would cost the City nearly \$1.5 million to administer a special election.

13. Instead of examining every voter signature submitted by a proponent of a ballot measure, an election official may evaluate a small, 3 percent sample. If the number of valid signatures within that sample is within **95 to 110 percent** of the prorated number of signatures required to qualify for a special election or regularly scheduled election, then the election official *must fully examine the remaining 97 percent of signatures*.⁵ In so doing, the election official would determine whether

³ Elections Code §9214.
⁴ Elections Code §9215 & §1405.
⁵ Elections Code §9115(b).

1 the ballot measure qualifies for a special or regularly scheduled election.

2 14. If, however, the number of valid signatures within that sample totals to
3 at least **110 percent** of the prorated number of signatures required to qualify for a
4 special or regularly scheduled election, then the elections official *must* certify that
5 the ballot measure has qualified for either a special election (at least 15 percent of
6 voter signatures required) or the City's next regularly scheduled election (at least 10
7 percent of voter signatures required).⁶

8 15. Under state law, the City Council has the power to call a special
9 election for *any* proposed ballot measure that receives at least 10 percent voter
10 support.⁷

11 16. After a proposed ballot measure has been given an official title and
12 summary, the proponent of that ballot measure must collect the required number of
13 voter signatures within **180 days**.⁸

14 17. Under Elections Code §100, every voter who is registered to vote in
15 the City has the right to sign any proposed ballot measure.

16 18. However, under Elections Code §105, election officials *are banned*
17 *from counting* the signature of any voter whose address listed on a proposed ballot
18 measure does not match the address listed for that voter in the official voter
19 database – even if that voter had moved and re-registered to vote *after* signing the
20 proposed ballot measure.

21 19. In contrast, if a voter moves *after* her vote-by-mail ballot has been
22 *received* by election officials, her vote *will be counted* under California law.⁹

23 20. Moreover, under federal law, if a voter moves within 30 days of a
24 Presidential election, she can vote using her *old* address, either by vote-by-mail or
25 in person – even if she has moved *out of state*.¹⁰

26 ⁶ Elections Code §9115, §9214 & §9215.

27 ⁷ Elections Code §9215(b).

28 ⁸ Elections Code §9208.

⁹ Elections Code §3019.

¹⁰ National Voter Registration Act of 1993, *codified at* 42 U.S.C. § 1973aa-1(e)

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Mr. Coltharp's Proposed Ballot Measure

21. The California Compassionate Use Act¹¹ and Medical Marijuana Program Act¹² give every patient the right to cultivate and possess medical marijuana.

22. Pursuant to those state statutes, Mr. Coltharp filed the Ballot Measure with Defendant Herrera. The Ballot Measure would authorize the City to regulate and tax dispensaries of medical marijuana.

23. On August 21, 2012, Defendant Herrera issued a letter (*attached as Exhibit 1*) containing the ballot title and summary for the Ballot Measure.

24. Immediately afterwards, Mr. Coltharp asked voters to sign a petition (the "Petition", *attached as Exhibit 2*) asking that the Ballot Measure be placed on the ballot.

25. On February 8, 2013, Mr. Coltharp submitted to the Clerk 28 boxes containing 43,159 signatures in support of the Petition. Two of those signatures were lawfully executed by Mr. Coltharp and Ms. Frazier.

Numerical Basis for the City Clerk's (Defendant Herrera's) Calculations

26. On March 7 and 8, 2013, Defendant Herrera told Mr. Coltharp that his Petition did not contain the number of signatures required to qualify the Ballot Measure for a special election.¹³

27. Before reaching that conclusion, Defendant Herrera stated that (1) the City had a total of 223,617 registered voters, and (2) to qualify for a special election, the Petition was required to contain at least 33,543 signatures (i.e., 15 percent of the 223,617 registered voters).¹⁴

28. Instead of examining all 43,159 signatures submitted by Mr. Coltharp,

¹¹ Health & Safety Code §11362.5.
¹² Health & Safety Code §11362.7 *et seq.*
¹³ Although Defendant Herrera's Mar. 7, 2013 letter (*attached as Exh. 3*) stated that the Petition had "failed", he subsequently clarified to Plaintiffs' counsel that he takes *no position* on whether the Petition qualified for the City's next *regularly scheduled* election.
¹⁴ Defendant Herrera's Signature Verification Calculations for the Petition, *attached as Exh. 4.*

1 Defendant Herrera chose to examine only a *3 percent sample* (i.e., 1,295 signatures)
2 of those signatures.

3 29. Based on the statutory formula set forth above,¹⁵ Defendant Herrera
4 stated that if at least 1,107 of the 1,295 signatures¹⁶ were deemed valid, the Ballot
5 Measure would qualify outright for a *special* election.

6 30. Based on the statutory formula set forth above,¹⁷ Defendant Herrera
7 stated that if between 957 and 1,106 of the 1,295 signatures¹⁸ were deemed valid,
8 he would be legally required to examine the remaining 41,864 (97 percent)
9 signatures submitted by Mr. Coltharp. In so doing, he would determine whether the
10 Ballot had received the support of at least 15 percent of the City's voters, and thus
11 qualified for a *special* election.

12 31. Based on the statutory formula set forth above,¹⁹ if at least 738 of the
13 1,295 signatures²⁰ were deemed valid, the City would be legally required to place
14 the Ballot Measure on the ballot no later than the next regularly scheduled election
15 (April 8, 2014).

16 *Results of the City Clerk's Examination of 3 Percent Sample*

17 32. After examining 1,295 of the 43,159 voter signatures, Defendant
18 Herrera told Mr. Coltharp that his Ballot Measure did not qualify for a special

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20 ¹⁵ See ¶¶11-14 *supra*; Defendant Herrera's Signature Verification Calculations for the
Petition, attached as Exh. 4.

21 ¹⁶ I.e., 110 percent of the prorated amount of signatures required to qualify for a special
22 election. Here, the 1,295-signature sample was multiplied by the proration factor of 0.7771959
[i.e., 33,543 (15 percent of the City's 223,617 voters) divided by 43,159 (the total number of
signatures submitted by Mr. Coltharp)], then multiplied by 1.1 (i.e., 110 percent).

23 ¹⁷ See *supra* note 15.

24 ¹⁸ I.e., between 95 to 110 percent of the prorated amount of 33,543 signatures (i.e., 15
percent of the City's 223,617 voters) required to qualify for a special election. Here, the 1,295-
signature sample was multiplied by the proration factor of 0.7771959 [i.e., 33,543 (15 percent of
the City's voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)],
then multiplied by 0.95 (i.e., 95 percent).

25 ¹⁹ See *supra* note 15.

26 ²⁰ I.e., 110 percent of the prorated amount of 22,362 signatures (i.e., 10 percent of the City's
27 223,617 voters) to qualify for a regularly scheduled election. Here, the 1,295-signature sample
was multiplied by the proration factor of 0.5181306 [i.e., 22,362 (10 percent of the City's 223,617
voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)], then
28 multiplied by 1.1 (i.e., 110 percent).

1 election.

2 33. Specifically, Defendant Herrera deemed **939** of the 1,295 voter
3 signatures to be valid. Thus, according to Defendant Herrera, the Petition fell 18
4 signatures short of the **957** voter signatures necessary to trigger a full, 100 percent
5 examination of all 43,159 signatures.²¹

6 34. Significantly, it is *undisputed* that Mr. Coltharp submitted the number
7 of signatures required to qualify for the City's next *regularly scheduled* election
8 (April 8, 2014). To qualify for a regularly scheduled election, Mr. Coltharp was
9 required to submit 738 valid signatures. According to Defendant Herrera, Mr.
10 Coltharp submitted 939 valid signatures – an *excess* of 201 signatures.

11 35. To date, Defendant Herrera has refused to certify to the City Council
12 that the Ballot Measure would qualify for the City's April 8, 2014 regularly
13 scheduled election.

14 *The City Clerk's Errors*

15 36. Defendant Herrera challenged 356 signatures from the 1,295-signature
16 sample.²²

17 37. After Defendant Herrera notified Mr. Coltharp that the Ballot Measure
18 did not qualify for a special election, Mr. Coltharp carefully examined the 356
19 signatures that had been challenged by Defendant Herrera. Toward this end, Mr.
20 Coltharp made repeated visits to the City Clerk's office in Long Beach, as well as
21 the Los Angeles County Registrar's office in Norwalk.

22 38. Of those 356 signatures, Defendant Herrera unlawfully did not count
23 the signatures of at least **18** voters.²³

24 39. Of those 18 voters, 5 voters were not counted because they allegedly

25 _____
26 ²¹ Defendant Herrera's Signature Verification Calculations for the Petition, *attached as Exh.*

27 ^{4.}
²² Defendant Herrera's Mar. 7, 2013 Petition Statistics, *attached as Exh. 5*, at 2.

28 ²³ To honor the confidentiality of voter-registration files, Plaintiffs will identify the voters only by name and Petition signature number (*see notes 25 through 28 infra*). Should the Court require their actual addresses, Plaintiffs will provide them under seal.

1 had unproven voter-registration status. Their signatures were not counted due to
2 what Defendant Herrera called “Fatal Pending” errors.²⁴

3 40. Subsequently, Mr. Coltharp discovered errors that had prompted
4 Defendant Herrera not to count the signatures of those 5 voters. In response to Mr.
5 Coltharp’s inquiries, the Los Angeles County Registrar’s office *corrected two of*
6 *those errors.*²⁵ Moreover, the signatures of three other voters should also have been
7 counted, but were not counted due to errors made by Defendant Herrera.²⁶

8 41. Accordingly, the signatures of all 5 voters mentioned above *should*
9 *have been counted.*

10 42. An additional 11 voters changed their voter-registration address *after*
11 they had signed Mr. Coltharp’s Petition. Those voters continue to live within the
12 City, but now reside at a different address.

13 43. Thus, those 11 voters (including Plaintiff Edith Frazier) had the right
14 to sign the Petition under Elections Code §100. However, Defendant Herrera did
15 not count their signatures, on account of Elections Code §105 – which bans a
16 voter’s signature from being counted if her address listed on the Petition did not
17 match her address listed on the voter-registration database. Thus, the signatures of
18 those 11 voters were classified under the category of “Different Address”).²⁷

19 44. Finally, the signatures of 2 voters were erroneously not counted (they

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21 ²⁴ *Id.* at 2.

22 ²⁵ The Los Angeles County Registrar had entered incorrect addresses for Claydale Bird
(Petition signature no. 38559) and Raul Nunez (Petition signature no. 40752), but corrected those
addresses after examining Mr. Coltharp’s inquiries.

23 ²⁶ Those three voters were Albert Jones (Petition signature no. 22183 – the address listed on
the voter-registration database was misread by Defendant Herrera); Clarke Dviche (Petition
signature no. 9 – name was misspelled by Defendant Herrera); and Bart Verner (Petition signature
no. 10842 – Defendant Herrera erroneously stated that his address was not located within the
City, when it in fact was located with the City).

24 ²⁷ *Id.* at 2. The 11 Long Beach voters are Edith Frazier (Petition signature no. 43110),
25 Lamar Wormsley (Petition signature no. 3865), Georgina Hill (Petition signature no. 6546),
26 Martin Thelonious (Petition signature no. 10110), Marivica Shyman (Petition signature no.
15637), Harvey Hunt (Petition signature no. 17866), Andrew Orlando (Petition signature no.
27 19609), Silvia Sandoval (Petition signature no. 28740), Everett Carmody (Petition signature no.
32955), Awet Teame (Petition signature no. 34141), and Margaret Olszewski (Petition signature
28 no. 42591).

1 were misclassified under the category of “Different Address”), because Defendant
2 Herrera had looked up the voter registration of the *wrong names*.²⁸

3 *Plaintiffs’ Rejected Offer of Compromise*

4 45. As shown earlier, it is undisputed that Mr. Coltharp submitted
5 sufficient signatures in order to qualify his Ballot Measure for the City’s next
6 regularly scheduled election.

7 46. During phone conversations on April 8 and 10, 2013 and in an April
8 18, 2013 letter,²⁹ Plaintiffs offered to waive their potential right to a special
9 election, if the City Clerk agreed to place the Ballot Measure on the April 8, 2014
10 City election (i.e., the next regularly scheduled City election). By not holding a
11 special election, the City taxpayers will save nearly **\$1.5 million**.

12 47. Regrettably, the City Clerk did not agree to Plaintiffs’ proposed
13 compromise. On April 8 and 10, 2013, Plaintiffs told Defendant Herrera, through
14 his counsel (the City Attorney’s office), that they would file a lawsuit against him
15 in order to vindicate their fundamental rights. Plaintiffs further indicated that their
16 lawsuit would seek reasonable costs and attorney’s fees from the City to the fullest
17 extent allowable by law.

18 **FIRST CLAIM FOR RELIEF (Voters Who Moved Within the City)**

19 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

20 (Amendments I & XIV and 42 U.S.C. § 1983)

21 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

22 48. The allegations of paragraphs 1 through 47 are hereby incorporated by
23 reference.

24 49. The conduct of Defendant Herrera violated Plaintiffs’ fundamental

25 ²⁸ Instead of examining the voter registration of Milton Snell (Petition signature no. 4651),
26 Defendant Herrera mistakenly examined the registration of Matt Suey (who is registered to vote
27 at a different address). Furthermore, Defendant Herrera erroneously did not locate the correct
address for Valerie Gallaher Hall (Petition signature no. 10101), because he had looked under the
surname of “Hall”, not “Gallaher Hall”.

28 ²⁹ Attached as Exh. 6.

1 right to support and place a ballot measure on the City ballot, for he refused to
2 count the signatures of voters who re-registered their voter-registration address
3 *after* they had signed Mr. Coltharp's Petition. That fundamental right is protected
4 under the United States Constitution (Amendments I & XIV) and 42 U.S.C. §1983.

5 50. Plaintiffs suffered irreparable harm, because Defendant Herrera
6 unlawfully banned them from supporting and placing a ballot measure on the City
7 ballot. At the same time, Defendant Herrera illegally spent public funds to block
8 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
9 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
10 from implementing Elections Code §105 with respect to the Ballot Initiative and
11 other proposed ballot measures.

12 51. An actual controversy now exists between Plaintiffs and Defendant
13 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
14 States Constitution (Amendments I & XIV) and 42 U.S.C. §1983. The parties
15 therefore need a declaration from the Court regarding whether Defendant Herrera's
16 actions, as alleged in this Complaint, violated the United States Constitution
17 (Amendments I & XIV) and 42 U.S.C. §1983.

18 **SECOND CLAIM FOR RELIEF (Voters Who Moved Within the City)**

19 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

20 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

21 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

22 52. The allegations of paragraphs 1 through 47 are hereby incorporated by
23 reference.

24 53. The conduct of Defendant Herrera violated Plaintiffs' fundamental
25 right to support and place a ballot measure on the City ballot, for he refused to
26 count the signatures of voters who re-registered their voter-registration address
27 *after* they had signed Mr. Coltharp's Petition. That fundamental right is protected
28 under the United States Constitution's Due Process Clause (Amendment XIV) and

1 42 U.S.C. §1983.

2 54. Plaintiffs suffered irreparable harm, because Defendant Herrera
3 unlawfully banned them from supporting and placing a ballot measure on the City
4 ballot. At the same time, Defendant Herrera illegally spent public funds to block
5 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
6 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
7 from implementing Elections Code §105 with respect to the Ballot Initiative and
8 other proposed ballot measures.

9 55. An actual controversy now exists between Plaintiffs and Defendant
10 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
11 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
12 The parties therefore need a declaration from the Court regarding whether
13 Defendant Herrera's actions, as alleged in this Complaint, violated the United
14 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

15 **THIRD CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
16 **Signatures)**

17 *As-Applied Violation of California Law (Supplemental Claim)*

18 (California Constitution art. ii §1 & Elections Code §100)

19 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

20 56. The allegations of paragraphs 1 through 47 are hereby incorporated by
21 reference.

22 57. The conduct of Defendant Herrera violated Plaintiffs' right to support
23 and place a ballot measure on the City ballot. Namely, he refused to count lawfully
24 executed voter signatures supporting the Petition, in violation of California
25 Constitution art. ii §1 and Elections Code §100.

26 58. Plaintiffs suffered irreparable harm, because by disqualifying those
27 lawfully executed voter signatures, Defendant Herrera unlawfully banned them
28 from supporting and placing a ballot measure on the City's ballot. At the same

1 time, Defendant Herrera illegally spent public funds to disqualify those voter
2 signatures. Consequently, Plaintiffs are entitled to declaratory and permanent
3 injunctive relief to restrain Defendant Herrera from further violating Elections Code
4 §100 with respect to the Ballot Initiative and other proposed ballot measures.

5 59. An actual controversy now exists between Plaintiffs and Defendant
6 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
7 Constitution art. ii §1 and Elections Code §100. The parties therefore need a
8 declaration from the Court regarding whether Defendant Herrera's actions, as
9 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
10 Code §100.

11 **FOURTH CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
12 **Signatures)**

13 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

14 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

15 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

16 60. The allegations of paragraphs 1 through 47 are hereby incorporated by
17 reference.

18 61. The conduct of Defendant Herrera violated Plaintiffs' fundamental
19 right to support and place a ballot measure on the City ballot, for he refused to
20 count voter signatures that were lawfully executed in support of the Ballot Measure.
21 That fundamental right is protected under the United States Constitution's Due
22 Process Clause (Amendment XIV) and 42 U.S.C. §1983.

23 62. Plaintiffs suffered irreparable harm, because by disqualifying those
24 lawfully executed voter signatures, Defendant Herrera Defendant Herrera
25 unlawfully banned them from supporting and placing a ballot measure on the City's
26 ballot. At the same time, Defendant Herrera illegally spent public funds to
27 disqualify those voter signatures. Consequently, Plaintiffs are entitled to
28 declaratory and permanent injunctive relief to restrain Defendant Herrera from

1 further violating the United States Constitution's Due Process Clause (Amendment
2 XIV) and 42 U.S.C. §1983 with respect to the Ballot Initiative and other proposed
3 ballot measures.

4 63. An actual controversy now exists between Plaintiffs and Defendant
5 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
6 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
7 The parties therefore need a declaration from the Court regarding whether
8 Defendant Herrera's actions, as alleged in this Complaint, violated the United
9 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

10 **FIFTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

11 *As-Applied Violation of California Law (Supplemental Claim)*

12 (California Constitution art. ii §1 & Elections Code §9215)

13 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

14 64. The allegations of paragraphs 1 through 47 are hereby incorporated by
15 reference.

16 65. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
17 right to support and place a ballot measure on the City ballot. Namely, he refused
18 to place the Ballot Measure on the City's next regularly scheduled election (April 8,
19 2014), in violation of California Constitution art. ii §1 and Elections Code §9215.

20 66. Plaintiffs suffered irreparable harm, because Defendant Herrera
21 unlawfully banned them from supporting and placing a ballot measure on the City's
22 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
23 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
24 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive
25 relief to order Defendant Herrera to comply with California Constitution art. ii §1
26 and Elections Code §9215 with respect to the Ballot Initiative and other proposed
27 ballot measures.

28 67. An actual controversy now exists between Plaintiffs and Defendant

1 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
2 Constitution art. ii §1 and Elections Code §9215. The parties therefore need a
3 declaration from the Court regarding whether Defendant Herrera's actions, as
4 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
5 Code §9215.

6 **SIXTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

7 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

8 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

9 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

10 68. The allegations of paragraphs 1 through 47 are hereby incorporated by
11 reference.

12 69. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
13 fundamental right to support and place a ballot measure on the City ballot. Namely,
14 he refused to place the Ballot Measure on the City's next regularly scheduled
15 election (April 8, 2014). That fundamental right is protected under the United
16 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

17 70. Plaintiffs suffered irreparable harm, because Defendant Herrera
18 unlawfully banned them from supporting and placing a ballot measure on the City's
19 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
20 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
21 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive
22 relief to restrain Defendant Herrera from further violating the United States
23 Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

24 71. An actual controversy now exists between Plaintiffs and Defendant
25 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
26 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

27 The parties therefore need a declaration from the Court regarding whether
28 Defendant Herrera's actions, as alleged in this Complaint, violated the United

1 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

2 **REQUEST FOR RELIEF**

3 Plaintiffs Jeremy Coltharp and Edith Frazier request the following relief from
4 the Court:

5 A. That the Court declare that Elections Code §105 is unconstitutional
6 and unenforceable, as applied to voters who re-registered their voter-registration
7 address *after* they had signed Mr. Coltharp's Petition.

8 B. That the Court declare that Defendant Herrera violated Plaintiffs'
9 fundamental rights under the United States Constitution (Amendments I & XIV &
10 Due Process Clause) and 42 U.S.C. §1983, by (1) implementing and enforcing
11 Elections Code §105 as to Mr. Coltharp's Petition and Ballot Measure, and (2)
12 illegally spending public funds to implement and enforce Elections Code §105.

13 C. That the Court issue a preliminary injunction prohibiting Defendant
14 Herrera, and all persons acting under his direction and control, (1) from
15 implementing and enforcing Elections Code §105 as to Mr. Coltharp's Petition and
16 Ballot Measure, and (2) from illegally spending public funds to implement and
17 enforce Elections Code §105.

18 D. That the Court declare that Defendant Herrera violated Plaintiffs'
19 fundamental rights under California Constitution art. ii §1 and Elections Code
20 §100, by refusing to count the lawfully executed signatures of voters who supported
21 Mr. Coltharp's Ballot Initiative.

22 E. That the Court order Defendant Herrera, and all persons acting under
23 his direction and control, to fully examine all 43,159 signatures submitted by Mr.
24 Coltharp, in order to determine whether his Ballot Measure qualifies for a special
25 election.

26 F. That the Court order Defendant Herrera, and all persons acting under
27 his direction and control, to count all voter signatures that were lawfully executed
28 in support of the Petition.

1 G. Alternatively, that the Court declare that Defendant Herrera violated
2 Plaintiffs' fundamental rights under California Constitution art. ii §1 and Elections
3 Code §9215, by (1) refusing to place the Ballot Measure on the April 8, 2014 City
4 ballot, and (2) illegally spending public funds to do so.

5 H. Alternatively, that the Court declare that Defendant Herrera violated
6 Plaintiffs' fundamental rights under the United States Constitution's Due Process
7 Clause (Amendment XIV) and 42 U.S.C. §1983, by (1) refusing to place the Ballot
8 Measure on the April 8, 2014 City ballot, and (2) illegally spending public funds to
9 do so.

10 I. Alternatively, that the Court order Defendant Herrera to place Mr.
11 Coltharp's Ballot Measure on the April 8, 2014 City ballot.

12 J. That the Court award Plaintiffs all reasonable costs and expenses,
13 including attorney's fees, pursuant to 42 U.S.C. §1988(b) and California Civil Code
14 of Procedure §1021.5.

15 K. That the Court award Plaintiffs all other relief deemed just and
16 equitable.

17
18
19 DATED: May 7, 2013

20
21 Respectfully submitted,

22
23 By: _____
GAUTAM DUTTA, ESQ.

24 Attorney for Plaintiffs

25 JEREMY COLTHARP AND

26 EDITH FRAZIER
27
28

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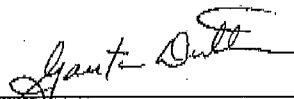
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24 Attorney for Plaintiffs
 25 JEREMY COLTHARP AND
 26 EDITH FRAZIER

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 28



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Monique De La Garza
Administrative Officer

ELECTIONS BUREAU

Poonam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Merianne Nakagawa
City Clerk Bureau Manager

August 21, 2012

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

Pursuant to California Elections Code Section 9203, enclosed is the ballot title and summary of the proposed measure you submitted to this office on August 6, 2012, relating to regulation of medical marijuana collectives.

Prior to circulating the petition, be sure that you have achieved compliance with the requirements of the Elections Code, commencing with Section 9200 through 9226, and Long Beach Municipal Code Chapter 1.22.

Once you meet publication requirements of Election Code Section 9205, you will then have 180 days to file a petition, from the date upon which you receive the ballot title and summary provided herein. The petition must be filed during normal business hours; and if the petition is not filed within the time period permitted, the petition shall be void for all purposes.

As of May 21, 2012, the Los Angeles County Registrar's web site reports that there are 223,617 registered voters in the City of Long Beach; however, the signature qualification thresholds prescribed by Election Code Sections 9215 and 9216, is not certain until you publish the Notice of Intention.

I can be reached at (562) 570-6489, should you need to speak with me.

Sincerely,

Larry Herrera
City Clerk

Exh. 1

17

BALLOT TITLE AND SUMMARY

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The Measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the City quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

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We the voters of the City of Long Beach California request that the ordinance be submitted immediately to a vote of the people at a special election.

The People of the City of Long Beach do ordain as follows:

Shall a ballot measure be submitted to the voters of the City of Long Beach at a special municipal election that will allow Medical Marijuana Collectives to operate in the City of Long Beach?

If approved by the voters of the City of Long Beach, that measure (hereinafter, the "Measure") shall add the following subsection to Chapter 3.80.243 Taxes on Service, of the Long Beach Municipal Code:
Chapter 3.80.243A.

- (1) An additional tax (hereinafter, the "Tax") shall be imposed on a licensed Medical Marijuana Collective, and shall not exceed four (4) per cent of gross sales as reported to the California State Board of Equalization. The Tax shall be paid quarterly to the City of Long Beach and within ten (10) days of filing a report of quarterly sales to the State Board of Equalization. A copy of that report shall accompany the Tax payment to the City of Long Beach.
- (a) The Tax shall be set annually by the City Council, and any failure of the City Council to set the Tax for the following calendar year shall automatically set the Tax rate for that year at two (2) per cent of the gross sales as reported to the State Board of Equalization on a quarterly basis for that year.

The Measure shall also amend, in its entirety, Chapter 5.89 of the Long Beach Municipal Code as follows:

Chapter 5.89 MEDICAL MARIJUANA COLLECTIVE

5.89.010 Purpose and intent

A. It is the purpose and intent of this Chapter is to promote the public health, safety and welfare of the residents of the City of Long Beach. The Compassionate Use Act (Cal. Health & Safety Code §11362.5) and the Medical Marijuana Program Act (Cal. Health & Safety Code §11362.765) do not interfere with a patient's right to use medical marijuana as authorized under State Law (as defined below), nor do they criminalize the possession or cultivation of Medical Marijuana (as defined below) by classes of persons who are authorized to do so under State Law. Only Qualified Patient Members (as defined below), persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively under State Law. Medical Marijuana Collectives (as defined below) shall comply with all provisions of the Long Beach Municipal Code, State Law, and all other applicable local and state laws.

Nothing in this Chapter permits activities that are banned by federal, state, or local law.

5.89.015 Definitions

Unless the particular provision or the context otherwise requires, the definitions and provisions in this Section shall govern the construction, meaning, and application of words and phrases as used in this Chapter.

- A. "Attending Physician" shall have the same definition as provided in Cal. Health and Safety Code Section §11362.7 (as may be amended), which defines "Attending Physician" as an individual (1) who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California, and (2) who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- B. "Business License" shall mean the license issued by the Director of Financial Management to a Collective that has applied for a City of Long Beach business license in accordance with this Chapter.
- C. "Chief of Police" shall mean the Chief of the Long Beach Police Department (or his or her designee).
- D. "Concentrated Cannabis" shall have the same definition as provided in Cal. Health and Safety Code §11006.5 (as may be amended), which defines "Concentrated Cannabis" as the separated resin, whether crude or purified, obtained from marijuana.
- E. "Director of Financial Management" shall mean the Director of Financial Management for the City of Long Beach (or his or her designee).
- F. "Edible Medical Marijuana" shall mean any article used for human food, drink, confectionery, condiment or chewing gum (regardless of whether that article is simple, mixed or compound) that (1) contains physician-recommended quantities of Medical Marijuana, and (2) within the City of Long Beach at a Collective in accordance with state law and this Chapter.
- G. "Identification Card" shall have the same definition as provided in Cal. Health and Safety Code §11362.7 (as may be amended),

(19)

- which defines "Identification Card" as a document issued by the State Department of Health Services which (1) identifies a person authorized to engage in the medical use of marijuana, and (2) identifies the person's designated primary caregiver (if any).
- H. "Management Member" shall mean a Medical Marijuana Collective Member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.
- I. "Marijuana" shall have the same definition provided in California Health and Safety Code Section 11018 (as may be amended), which defines "Marijuana" as Cannabis Sativa L. (whether growing or not) (hereinafter, the "Plant"); the seeds thereof; the resin extracted from any part of the Plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the Plant, its seeds or resin. It does not include the mature stalks of the Plant, fiber produced from the stalks, oil or cake made from the seeds of the Plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- J. "Medical Marijuana" shall mean Marijuana used for medical purposes in accordance with California Health and Safety Code §§11362.5 et seq.
- K. "Medical Marijuana Collective" (hereinafter, the "Collective") shall mean an incorporated or unincorporated association, composed of four (4) or more Qualified Patient Members and their designated Primary Caregivers who associate at a Property (as defined below) within the City of Long Beach to collectively or cooperatively cultivate Marijuana for medical purposes or distribute that Medical Marijuana to Collective members and Management Members, in accordance with California Health and Safety Code §§11362.3, et seq. For purposes of this Chapter, the term Medical Marijuana "Cooperative" shall have the same meaning as Medical Marijuana Collective.
- L. "Park" or "Public Park" shall mean publicly owned natural or open areas set aside for active and passive public use for recreational, cultural or community service activities.
- M. "Primary Caregiver" shall have the same definition as provided in California Health and Safety Code §§ 11362.5 and 11362.7 (as may be amended), which define "Primary Caregiver" as an individual, designated by a Qualified Patient, who has consistently assumed responsibility for the housing, health, or safety of that Qualified Patient.
- N. "Property" shall mean the location or locations within the the City of Long Beach at which the Medical Marijuana Collective members and Management Members associate to collectively or cooperatively cultivate or distribute Medical Marijuana exclusively for the Collective members and Management Members.
- O. "Qualified Patient" shall mean a person who (1) is entitled in the protections of Health and Safety Code §11362.5 for Patient Members, and (2) may obtain and use marijuana for medical purposes upon the recommendation of an Attending Physician, regardless of whether that person applied for and received a valid identification Card issued pursuant to State Law.
- P. "Reasonable Compensation" shall mean compensation commensurate with reasonable wages and benefits paid to employees of IRS-qualified nonprofit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked. The payment of a bonus shall not be considered "Reasonable Compensation."
- Q. "State Law" shall mean the state regulations set forth in the Compassionate Use Act and the Medical Marijuana Program Act, codified at California Health and Safety Code §§11362.3, et seq.
- R. "Personal Service Type Business." A Medical Marijuana Collectives shall be considered a personal service type business in the City of Long Beach with respect to issuing a Business License and setting taxes.
- S. "Sale" shall mean any sale, exchange, donation, reimbursement or barter.

5.89.020 Business License Required

It shall be unlawful for any person or entity to engage in, operate, or conduct a Medical Marijuana Collective on any Property, unless that Collective has obtained and continues to maintain in full force and effect a Business License.

5.89.030 Medical Marijuana Collective Business License

Any Medical Marijuana Collective seeking to operate a Collective in the City of Long Beach shall first fill out a Business License application provided by the Director of Financial Management (or his or her designee). If the Collective's location (a) meets the general requirements for doing business in a commercial, retail and/or industrial zone, and (b) meets the City of Long Beach's building code requirements for businesses that fall under the personal service section of the licensing code, the Collective shall be issued a Business License.

5.89.040 Operating Conditions

No Medical Marijuana Collective shall be allowed to operate in the City of Long Beach without meeting the following conditions and standards:

- The Collective's Property shall not be located in an area zoned in the City for exclusive residential use. Medical Marijuana Collectives shall not be permitted to operate in an exclusive residential zone as established pursuant to Title 21 of this Code.
- The Medical Marijuana Collective shall not be located within a one-thousand-five-hundred (1,500) foot radius of a public or private High School or Educational Partnership High School (hereinafter, "EPHS") or within a one-thousand (1,000) foot radius of a public park, public beach or a public or private kindergarten, elementary, middle or junior high school. The distances specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Medical Marijuana Collective is located, without regard to intervening structures.
- The Medical Marijuana Collective shall not be located within a one-thousand (1,000) foot radius of any other Medical Marijuana Collective. The distance specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of any other Medical Marijuana Collective, to the closest property line of the lot on which the licensed Medical Marijuana Collective is located, without regard to intervening structures. Any Collective that had been permitted by the City Council to operate after February 14, 2012 shall be exempted from the requirements of this provision.
- Exterior building and parking area lighting on the Property shall be in compliance with all applicable provisions of this Code.
- Any exterior or interior sign visible from the exterior of the Property shall be unlighted.
- Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry, and shall be equipped with latches that (1) may be released quickly from the inside to allow exit in the event of an emergency, and (2) are in compliance with all applicable building code provisions.
- Each Collective shall designate a Community Relations Liaison (hereinafter, the "Liaison"), who shall be at least eighteen (18) years of age, and shall provide the Liaison's name to the Director of Financial Management. The Liaison shall receive all complaints received by the Director of Financial Management (or his or her designee), regarding his or her own Collective. The Liaison shall have the responsibility and duty to address and promptly resolve all complaints. To address community complaints and concerns, the name and telephone number for the Liaison shall be made publicly available.
- The Property shall contain an odor-absorbing ventilation and exhaust system to ensure that odor generated inside the Property is not detected outside the Property.
- The Collective shall install and maintain a video surveillance system that monitors at least the front and rear of the Property. The surveillance system shall:
 - Capture a full view of the public right-of-way and any parking lot under the control of the Collective.
 - Be of adequate quality, color rendition and resolution to allow the ready identification of any individual who commits a crime anywhere on or adjacent to the exterior of the Property.
 - Record and maintain video for a minimum of thirty (30) days.

Each Collective shall produce recordings from the video surveillance system to the Police Department of the City of Long Beach when a search warrant, subpoena or court order has been provided.

- The Property shall have a centrally monitored fire and burglar alarm system.
- A sign shall be posted in a conspicuous location inside the Property advising:
 - The diversion of marijuana for non-medical purposes is a violation of State Law.

20

2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code §647(b).
 4. This Medical Marijuana Collective is licensed in accordance with the laws of the City of Long Beach.
 5. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State Law.
- L. Each Collective shall meet all applicable state laws consistent with the protection of the health, safety, and welfare of (1) the community, (2) Qualified Patient Members, and (3) Primary Caregivers.
- M. Collective cultivation of Medical Marijuana shall be limited to the Medical Marijuana Collective Members and Management Members.
- N. Cultivation of Medical Marijuana by the Medical Marijuana Collective Members and Management Members shall occur exclusively within the City of Long Beach.
- O. Every Medical Marijuana Collective shall maintain cultivation records, signed under penalty of perjury by each Management Member, that identify (1) the location within the City of Long Beach at which the Medical Marijuana was cultivated, and (2) the total number of Plants cultivated at each location.
- P. Representative samples of Medical Marijuana distributed by the Collective shall be analyzed by an independent laboratory to ensure that they are free of harmful pesticides and other contaminants regulated under local, state or federal law.
- Q. Any Medical Marijuana whose representative sample has tested positive for a harmful pesticide or other contaminant at a level which exceeds the local, state, or federal regulatory or statutory standards shall be promptly destroyed.
- R. Any Medical Marijuana provided to Collective Members shall be properly labeled in strict compliance with state and local laws.
- S. The operation of medical Marijuana Collectives shall be limited to the hours between nine o'clock (9:00) A. M. and eight o'clock (8:00) P. M.
- T. Any and all business identification signs comply with the provisions of Chapter 21.44 "On Premises Signs" as set forth in this Code.

5.89.050 Each Medical Marijuana Collective shall cultivate Medical Marijuana on a membership basis and in accordance with the needs of its members.

5.89.060 License Not Transferable and Required Conduct.

- A. A Business License issued pursuant to this Chapter shall become null and void if a Collective (1) closes or dissolves, and/or (2) relocates to a different Property.
- B. The lawful conduct of activity regulated by this Chapter by a Collective shall be limited to those activities expressly indicated on the Business License application.
- C. The holder of a Business License shall not allow non-members of a Collective to cultivate Medical Marijuana on the Collective's Property.

5.89.070 Maintenance of Records

- A. A Medical Marijuana Collective shall maintain the following records on the Property.
1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.
 2. The full name, address and telephone number(s) and a fully legible copy of a government issued form of identification of each Collective member engaged in the management of the Collective and a description of the exact nature of the participation in the management of the Collective. Acceptable forms of government issued identification include, but are not limited to: Driver licenses or photo identify cards issued by State Department of Motor Vehicles (or equivalent) that meets REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents), or a Permanent Resident Card.
 3. The full name, address, and telephone number(s) of each Collective member and Management Member who participates in the Collective cultivation of Medical Marijuana.
 4. The full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member; the date each member and management Member joined the Collective; the exact nature of each member's and management Member's participation in the Collective; and the status of each member and Management Member as a Qualified Patient or Primary Caregiver.
 5. A written accounting of all cash and in-kind contributions, reimbursement, and reasonable compensation provided by the Collective Management Members and members of the Collective, and all expenditures and costs incurred by the Collective.
 6. An inventory record documenting the dates and amounts of Medical Marijuana cultivated at the Property, and the daily amounts of Medical Marijuana stored on the Property.
 7. Proof of a valid Business License issued by the Director of Financial Management Department, in accordance with this Chapter.
 8. Any and all records described in §5.89.070 (A) shall be maintained by the Medical Marijuana Collective for a period of five (5) years, and shall be made available by the Collective to the City upon request, subject to the authority set forth in §5.89.080.
- B. Annual Reports. Each Medical Marijuana Collective operating in the City shall submit to the City Manager (or his or her designee) an annual financial report (hereinafter, the "Annual Report") prepared by the Collective, using the following criteria.
1. Each Annual Report shall be filed and submitted every calendar year no later than April 30 for each preceding calendar year (for example a Collective's 2010 Annual Report shall be submitted to the City manager no later than April 30, 2011).
 2. The Annual Report shall be a summary of the quarterly reports that were filed with the State Board of Equalization in the previous year.
 3. The Annual Report shall document the number of Medical Marijuana transactions that took place during the reporting year to a Qualified Patient or Management Member for cash, credit, or in-kind contributions.
 4. Appended to the Annual Report shall be a copy of any and all documents, records or forms submitted to the State Board of Equalization for the reporting year, including but not limited to Board of Equalization Form 401 (or its electronic equivalent) which in any manner documents transaction activities relating to the operation of the Medical Marijuana Collective.
 5. Appended to the Annual Report shall be an accounting of the number of Plants or clones cultivated by the dispensary during the reporting year.
 6. Any and all records or documents that serve as the basis for preparing the annual report shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available to the city upon request, pursuant to §5.89.080.

5.89.080 Inspection Authority

City representatives (Fire and Building Inspectors) may enter and inspect the Property of every Medical Marijuana Collective between the hours of nine o'clock (9:00) A. M. and eight o'clock (8:00) P.M. or at any reasonable time to ensure compliance and enforcement of the provisions of City Codes. The Police Department may be allowed to enter the Property if invited by a member of the Collective or in case of an emergency. Otherwise access shall only be available to the Police Department through a properly executed search warrant, subpoena, or court order. It shall be unlawful for any Property owner, landlord, and lessee, Medical Marijuana Collective member or Management Member or any other person having any responsibility over the operation of the Medical Marijuana Collective to refuse to allow, impede, obstruct or interfere with an inspection.

5.89.090 Existing Medical Marijuana Collectives

A. Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until it fully complies with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed before this Chapter was enacted shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.

5.89.100 Prohibited Activity

- A. It shall be unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana for medical or non-medical purposes except as provided in this Chapter, and pursuant to all other applicable local and state law.
- B. It shall be unlawful for any person to cause, permit or engage in any activity related to Medical Marijuana except as provided in this Chapter and in Health and Safety Code §§11362.5 et seq., and pursuant to all other applicable local and state law.
- C. It shall be unlawful for any person to knowingly make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided to the City of Long Beach under this Chapter.
- D. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, distribution or exchange of Medical

Marijuana or any Edible Medical Marijuana product to any non-Collective Management Member or Member.

E. No cultivation of Medical Marijuana on the Property shall be visible with the naked eye from any public or other private property, nor shall cultivated Medical Marijuana or dried Medical Marijuana be visible from the building exterior. No cultivation shall occur on the Property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

F. The manufacture of Concentrated Cannabis in violation of California Health and Safety Code §11379.6 is hereby banned.

G. No Medical Marijuana Collective shall be open to or provide Medical Marijuana to its members or Management Members between the hours of eight o'clock (8:00) P.M. and nine o'clock (9:00) A.M.

H. No person under the age of eighteen (18) shall be allowed on the Property, unless that minor is a Qualified Patient and is accompanied by his or her licensed Attending Physician, parent(s) or documented legal guardian.

I. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the property.

J. No dried Medical Marijuana shall be stored at the property in structures that are not completely enclosed, in an unlocked vault or safe, in any other unsecured storage structure, or in a safe or vault that is not bolted to the floor of the property.

K. Medical Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the Property, or in the parking areas of the Property or in those areas restricted under the provisions of California Health and Safety Code §11362.79, which include:

1. Any place where smoking is prohibited by law.
2. Within one thousand (1,000) feet of the grounds of a school, recreation center, or youth center.
3. While on a school bus.
4. While in a motor vehicle that is being operated.
5. While operating a boat.

L. No person who has been convicted within the previous ten (10) years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance shall be engaged directly or indirectly in the management of the Medical Marijuana Collective nor, further, shall manage or handle the receipts and expenses of the Collective.

5.89.110 Violations and Enforcement

A. Any person violating any provision of this Chapter or knowingly or intentionally misrepresenting any material fact in procuring the license herein provided for, shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than twelve (12) months, or both such fine and imprisonment.

B. Any person who engages in any Medical Marijuana Collective operations (1) after a Business License has been denied, or (2) after a Business License has been suspended or revoked; but before a new license is issued, shall be guilty of a misdemeanor.

C. Any violation of the terms and conditions of the Business License, of this Chapter, or of applicable local or state regulations and laws shall be grounds for suspending or revoking its license.

5.89.120 Suspension, Revocation, and Appeals Process

A. If a City Department determines that a Collective has failed to comply with any provision of this Chapter on at least three occasions, the Director of Financial Management shall revoke or suspend the Business License.

B. The Director of Financial Management shall notify a Collective that its license has been suspended or revoked by means of a dated written notice, which shall advise the Collective of its right to appeal the decision to the City Council. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based, and shall be filed with the Director of Financial Management within thirty (30) calendar days from the date the notice was mailed along with an appeal deposit, in an amount determined by the City Council by resolution. If an appeal is filed, a license may not be suspended or revoked before that appeal has been fully adjudicated.

C. The City Council shall conduct a hearing (hereinafter, the "City Council Hearing") on the appeal or refer the matter to a hearing officer pursuant to Chapter 2.93 of this Code, within forty-five (45) calendar days from the date the completed request for appeal was received by the Director of Financial Management, except where good cause exists to extend this period. The appellant shall be given at least fifteen (15) calendar days' written notice of the City Council Hearing. The City Council Hearing shall be conducted pursuant to Chapter 2.93 of this Code. The determination of the City Council on the appeal shall be final, unless the licensee chooses to file a court action within thirty (30) calendar days of that determination.

D. Whenever a Medical Marijuana Collective's license has been revoked or suspended, no other Business License application shall be considered for that Collective for a period of one (1) year from either (a) the date on which the notice of the revocation or suspension was mailed, or (b) the date of the final decision of the City Council, whichever is later.

5.89.130 Operative Date of Cultivation Requirement

Each Medical Marijuana Collective that has been issued a Business License pursuant to this Chapter shall have one-hundred-and-twenty (120) calendar days from the date the license is issued to comply with the Medical Marijuana cultivation requirements set forth in §5.89.040.

5.89.140 Severability

The provisions of this Chapter are severable. If any provision of this Chapter is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

NOTICE OF INTENT TO CIRCULATE PETITION

NOTICE IS HEREBY GIVEN by the person(s) whose name appears hereon of their intention to circulate the petition within the City of Long Beach for two purposes; (1) Adding to Chapter 3.80.243 A., taxes on service the following subsections 1 and 1 (a), which sets out the tax rate for Medical Marijuana Collectives; and (2) amending in its entirety Chapter 5.89 Medical Marijuana Collectives, which authorizes the City of Long Beach to issue business licenses to Medical Marijuana Collectives.

Respectfully,

Jeremy Allen Coltharp

████████████████████
Long Beach, CA ██████████

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the city quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

VOLUNTEER CIRCULATOR

NOTICE TO THE PUBLIC
THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER.

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All Signers Must Be Registered Voters of the City of Long Beach, California		OFFICIAL USE ONLY
1	Print Your Name	Residence Address ONLY (No P.O. Box)
	Your Signature as Registered to Vote	City or Town
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Exh. 2

23

Initiative Measure To Be Submitted Directly To The Voters

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23a

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24	Print Your Name	Residence Address ONLY (No P.O. Box)
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236

Initiative Measure To Be Submitted Directly To The Voters

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**DECLARATION OF PERSON CIRCULATING SECTION OF INITIATIVE PETITION
(MUST BE IN CIRCULATOR'S OWN HANDWRITING)**

I _____ am registered to vote or am qualified to register to vote in the City of Long Beach, California, (print full name of circulator)

My residence address is _____ (include city, state, zip)

I personally circulated the attached petition for signing. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature of the person whose name it purports to be; and the appended signatures were obtained between the dates of _____ and _____ inclusive. (starting date) (ending date)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at _____, California. (Date) (City)

Signature of Circulator _____ (complete signature including full name of circulator)

23c



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Monique De La Cruz
Administrative Officer

ELECTIONS BUREAU

Poonam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Marianne Nakagawa
City Clerk Bureau Manager

March 7, 2013

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

We have concluded verification of signatures on your petition calling for the Regulation of Medical Marijuana Collectives in the City of Long Beach. Our verification was conducted pursuant to Elections Code Section 9115 and the California Code of Regulations, Title 2, Division 7, Title 5 – Election Petition Signature Verification Random Sampling Verification Methodology.

Pursuant to California Elections Code Section 9115(e), you are hereby notified that the total number of signatures to the petition is less than the number of qualified voter signatures required to find the petition sufficient; and therefore, the petition has failed.

Along with this letter, please find enclosed my Certificate of Insufficiency dated March 7, 2013.

Please do not hesitate to contact me should you have any questions, I can be reached at (562) 570-6489.

Sincerely,


Larry Herrera
City Clerk



CERTIFICATE OF INSUFFICIENCY OF INITIATIVE PETITION

I, Larry Herrera, City Clerk of the City of Long Beach, County of Los Angeles, State of California, hereby certify that:

The petition entitled "Initiative Regulation of Medical Marijuana Collectives" was filed with the City Clerk Office on February 8, 2013;

That said petition consists of 2,473 sections, and that each section contains signatures purporting to be signatures of qualified electors of the City of Long Beach, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affidavit stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of Los Angeles Registrar-Recorder/County Clerk's petition and signature verification system, I have determined the following facts regarding this petition:

- | | |
|---|--------|
| 1. Total number of signatures filed by proponents: | 43,159 |
| 2. Total number of signatures verified (3% per EC 9115(a): | 1,295 |
| 3. Number of signatures found sufficient: | 939 |
| 4. Number of signatures found not sufficient: | 356 |
| 5. Number of signatures not sufficient because of Duplication: | 0 |
| 6. Total number of signatures deemed valid ((939/1,295) x 43,159) | 31,294 |

Based on this examination and in accordance with Elections Code Section 9115, the initiative petition is insufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Long Beach this 7th day of March, 2013.

Larry Herrera
City Clerk
City of Long Beach

25

Signature Verification Calculations

City Initiative Submitted to Voters

EC Div. 9, Ch. 2, Art. 1 -- §§ 9100-9190

Petition Title: LONG BEACH MEDICAL MARIJUANA COLLECTIVES

Initiative Petition Calculations

Registration (Reported by LARRCC 5/21/2012) 223,617
EC 9215

Total Signatures Submitted: 43,159

Signatures needed to qualify for election: 33,543
15% threshold -- EC 9214

The random sample shall include 500 signatures or 3% of those submitted, whichever is greater. EC 9115(a)

Number of signatures to verify: 1,295

Number of valid signatures: 939

1,107 - PASS
957 - 1106 - WOULD REQUIRE FULL SIG
956 - INITIATIVE FAILS

Number of duplicate signatures: 0

Number of challenged signatures: 356 3/5/2013

SOS Signature Validation Formula

Factors	Description
A	Value of each signature
B	Penalty value for duplicate signature
C	Total value of all duplicate signatures
V	Adjusted number of valid signatures

Factor	Formula	
A	Total Signatures/signatures to verify = A	33.33
B	A x (A - 1) = B Penalty value for duplicate signatures	1,110
C	B x the number of duplicate signatures = C	0
V	Signatures submitted x (valid signatures in sample/sample size) = V	31,294
V - C = Statistically valid total		31,294

If the statistical sample is within 95% to 110% of the required number signatures, the elections official must verify ALL petition signatures. EC 9115(b)

Statistical total as percent of total needed: 93.30%

Initiative Fails to Qualify

Exh. 4

26

Petition Statistics

3/7/2013 4:56:41PM
LONG BEACH MEDICAL MARIJUANA COLLECTIVES
CITY OF LONG BEACH 2013

Petition ID:11966

Total Sigs Required	1,295
Total Sigs Submitted	43,159
Total Sample Size	1,295
Total Sigs Verified	1,295

		TOTAL CHALLENGED
ADD	DIFFERENT ADDRESS	
	Total	95
AEV	INFO ENTERED BY CIRCULATOR	
	Total	28
CAN	CANCELED	
	Total	15
FP	FATAL PENDING	
	Total	35
MADD	PO BOX/MAILING ADDRESS	
	Total	1
NR	NOT REGISTERED	
	Total	106
SIG	MISMATCH SIGNATURE	
	Total	60
WDIST	WRONG DISTRICT	
	Total	16
TOTAL		356

TOTAL VALID : 939

Exh. 5

27

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

April 18, 2013

Via Electronic & U.S. Mail

The Honorable Robert E. Shannon
 City Attorney
 Attn: Charles Parkin, Esq.
 Long Beach City Hall, 11th Floor
 333 West Occan Boulevard
 Long Beach, CA 90802

Re: Let the Voters Decide Whether to Regulate and Tax Medical Marijuana

Dear City Attorney Shannon:

We represent Long Beach resident Jeremy Coltharp, who recently filed a 43,159-signature petition (the "Petition") to authorize the City of Long Beach to regulate and tax the medical-marijuana dispensaries. As you know, the California Compassionate Use Act¹ and Medical Marijuana Program Act² give every patient the right to cultivate and possess medical marijuana.

We have reason to believe that our Petition contains sufficient voter signatures (i.e., 15 percent of the City's registered voters) to qualify for a special election.³ We hereby *demand* that the City review all 43,159 voter signatures submitted by Mr. Coltharp, so that the voters will know whether they have the *right* to vote on the Petition at a special election.

Alternatively, in the spirit of compromise, we ask that the Petition be placed on the ballot of the City's April 8, 2014 Primary Nominating Election.⁴ In this manner, Long Beach taxpayers would save nearly **\$1.5 million** that must otherwise be spent on a special election.

We appreciate the respectful dialogue we have had with City Clerk Larry Herrera and Assistant City Attorney Charles Parkin. However, we are disappointed that the City has denied our reasonable requests.

First, we are disappointed that the City Clerk has declined to review all 43,159 voter signatures, because he claims that our Petition fell 18 signatures short of the 957 signatures required⁵ to qualify for a full signature evaluation. However, the City Clerk's claim does not withstand careful analysis. In fact, 14 of those signatures were not

¹ Codified at Health & Safety Code §11362.5.

² Codified at Health & Safety Code §11362.7 *et seq.*

³ Elections Code §9214.

⁴ Elections Code §9215.

⁵ The City sampled 3 percent (1,259) of the 43,159 voter signatures submitted by Mr. Coltharp. Based on a statutory formula, if 957 signatures of that sample are valid, the City must fully review *all* 43,159 signatures. See Elections Code §9115. The City Clerk claims that 938 signatures from the 1,259-signature sample are valid.

Exh. 6

28

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

counted for an improper reason: after signing our Petition, those 14 voters had moved to a different address. Furthermore, an additional 4 signatures were not counted due to erroneous voter-database records. Because our Petition satisfies the requirements for a full signature evaluation, the City must review all 43,159 voter signatures that were submitted by Mr. Coltharp.

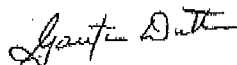
Second, we are disappointed that you have rejected our proactive effort to save Long Beach taxpayers nearly \$1.5 million dollars, by declining to place our proposed initiative on the City's April 8, 2014 Primary Nominating Election. By law, if a proposed initiative has been signed by at least 10 percent of registered voters, a city must either (a) enact that initiative into law, or (b) place that initiative on the ballot no later than the next regular municipal election.⁶

Here, it is *beyond question* that our Petition was signed by at least 10 percent of Long Beach voters. Therefore, the City *must* either (a) enact the proposed initiative into law, or (b) place that initiative *on the ballot* no later than the next regular municipal election (here, April 8, 2014). See, e.g., *MHC Financing v. City of Santee* (2005) 125 Cal.App.4th 1372, 1383 & n. 11; *Native American Sacred Site & Environmental Protection Ass'n. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 966-67.

Unless this matter is resolved by **Apr. 24, 2013**, we will have no choice but to (1) ask a court to vindicate the rights of all Long Beach voters, and (2) seek all reasonable attorney's fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure.

We hope that the City will let the voters decide whether to regulate and tax medical marijuana. We look forward to your prompt response.

Sincerely,



Gautam Dutta

Cc: The Mayor, Members of the City Council, and the City Clerk

⁶ Elections Code §9215 & §1405.



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Monique De La Garza
Administrative Officer

ELECTIONS BUREAU

Poonam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Merianne Nakagawa
City Clerk Bureau Manager

August 21, 2012

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

Pursuant to California Elections Code Section 9203, enclosed is the ballot title and summary of the proposed measure you submitted to this office on August 6, 2012, relating to regulation of medical marijuana collectives.

Prior to circulating the petition, be sure that you have achieved compliance with the requirements of the Elections Code, commencing with Section 9200 through 9226, and Long Beach Municipal Code Chapter 1.22.

Once you meet publication requirements of Election Code Section 9205, you will then have 180 days to file a petition, from the date upon which you receive the ballot title and summary provided herein. The petition must be filed during normal business hours; and if the petition is not filed within the time period permitted, the petition shall be void for all purposes.

As of May 21, 2012, the Los Angeles County Registrar's web site reports that there are 223,617 registered voters in the City of Long Beach; however, the signature qualification thresholds prescribed by Election Code Sections 9215 and 9216, is not certain until you publish the Notice of Intention.

I can be reached at (562) 570-6489, should you need to speak with me.

Sincerely,

Larry Herrera
City Clerk

BALLOT TITLE AND SUMMARY

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The Measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the City quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Monique De La Garza
Administrative Officer

ELECTIONS BUREAU

Poonam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Merianne Nakagawa
City Clerk Bureau Manager

Date: March 25, 2013
To: Mayor and Members of the City Council
From: Larry Herrera, ^{JA} City Clerk
Subject: Regulation of Medical Marijuana Collectives Initiative Petition

On March 7, 2013, the City Clerk Department concluded verification of signatures on the initiative petition submitted by Mr. Jeremy Coltharp. The initiative proposed an ordinance pertaining to the regulation of medical marijuana collectives in the City of Long Beach.

Pursuant to the California Elections Code Section 9115, the City Clerk Department conducted a random sample signature verification of 43,159 signatures to determine whether the initiative qualified for a special election, as indicated on the petition. As required by statute, the petition verification was to be completed by March 25, 2013.

On March 7, 2013, I notified Mr. Coltharp that the number of signatures to the petition was less than the number of qualified voter signatures required to find the petition sufficient. The petition failed because the random sample showed that only 31,294 signatures were deemed to be valid, whereas 33,543 valid signatures were required for the initiative to qualify for either adoption as an ordinance or submittal of the measure to the voters at special election.

A copy of my letter to Mr. Coltharp advising him of the petition's insufficiency is attached to this memo.

Should you have any questions, please contact me at 562.570.6489.

Cc: City Attorney
City Manager

Notice of Intent to Circulate Petition

Notice is hereby given by the person(s) whose name appears hereon of their intention to circulate a petition within the City of Long Beach for two purposes: (1) Adding to Chapter 3.80.243 A., Taxes on Service the following subsections 1 and 1(a), which sets out the tax rate for Medical Marijuana Collectives; and (2) amending in its entirety Chapter 5.89 Medical Marijuana Collective, which authorizes the City of Long Beach to issue business licenses to Medical Marijuana Collectives. A statement of the reasons of the proposed action contemplated by the petition follows:

First and foremost, the authorization of Medical Marijuana Collectives in the City of Long Beach will allow for safe access to qualifying patients seeking Medical Marijuana for relief from the effects of a medical condition.

The Scripps Research Institute, California Pacific Medical Center, Columbia University, University of California, San Diego School of Medicine, Complutense University of Madrid and other research centers have conducted studies -- and have reported that many patients with debilitating medical conditions have benefited from the use of Medical Marijuana/Cannabis. Some of the treated medical conditions include: nausea, vomiting, cachexia, cancer, premenstrual syndrome, unintentional weight loss, insomnia, lack of appetite, spasticity, neurogenic pain, movement disorders, asthma, glaucoma, alcohol abuse, bipolar disorder, epilepsy, Huntington's disease, HIV, Parkinson's disease, ALS, PTSD, multiple sclerosis and psoriasis.

Eighteen states plus the District of Columbia have legalized medical cannabis or effectively decriminalized it including Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington. Other states are considering following their example.

The tax assessment set out in the amendment to chapter 3.80.243 A (1) and (1) (a) will provide additional revenue to the City of Long Beach's General Fund.

A well regulated industry, with clear operational standards, expectations, and limits, will reduce the dangers presented by illegal drug dealing and potentially unsafe medicinal products. Effective regulation, as provided by this measure, carries out the intent of California voters by providing compassionate relief to individuals who have received approval and recommendation from qualified physicians.

When used and distributed responsibly, medical marijuana will not increase crime. However, an unregulated system that forces desperate patients into back-alley procurement to ease to their suffering will most certainly endanger the safety of both patients and residents. Clear definitions, parameters and operational standards will provide the City, Law Enforcement, Dispensary Operators and Patients a clear set of guidelines that must be adhered to in order to remain in operation. Strict limitations in the

number and location of dispensaries will ensure safe access while maintaining a low profile and small footprint in Long Beach. The requirement of background checks of all dispensary employees will further increase oversight and control.

When California voters approved the *Compassionate use Act of 1996*, their intent was clear -- individuals suffering from debilitating conditions that could be improved by the use of medical marijuana should have access to that relief in a controlled, safe, and legal environment. This proposed initiative provides a way for the City of Long Beach not only to acknowledge that intent, but to ensure the safety and integrity of its citizens.

In accordance with California Election Code Section 9203 we request that the City of Long Beach prepare the ballot title and summary for the proposed measure regarding Medical Marijuana Collectives in the City of Long Beach.

Jeremy Coltharp JJ CA
Name

7034 E. Reading Street Long Beach CA, 90815
Address

herbalcarson@gmail.com
Phone number

Shall a ballot measure be submitted to the voters of the City of Long Beach at a special municipal election that will allow Medical Marijuana Collectives to operate in the City of Long Beach?

If approved by the voters of the City of Long Beach, that measure (hereinafter, the "Measure") shall add the following subsection to Chapter 3.80.243 Taxes on Service, of the Long Beach Municipal Code:

Chapter 3.80.243A.

- (1) An additional tax (hereinafter, the "Tax") shall be imposed on a licensed Medical Marijuana Collective, and shall not exceed four (4) per cent of gross sales as reported to the California State Board of Equalization. The Tax shall be paid quarterly to the City of Long Beach and within ten (10) days of filing a report of quarterly sales to the State Board of Equalization. A copy of that report shall accompany the Tax payment to the City of Long Beach.
 - (a) The Tax shall be set annually by the City Council, and any failure of the City Council to set the Tax for the following calendar year shall automatically set the Tax rate for that year at two (2) per cent of the gross sales as reported to the State Board of Equalization on a quarterly basis for that year.

The Measure shall also amend, in its entirety, Chapter 5.89 of the Long Beach Municipal Code as follows:

Chapter 5.89 MEDICAL MARIJUANA COLLECTIVE

5.89.010 Purpose and intent

A. It is the purpose and intent of this Chapter is to promote the public health, safety and welfare of the residents of the City of Long Beach.

The Compassionate Use Act (Cal. Health & Safety Code §11362.5) and the Medical Marijuana Program Act (Cal. Health & Safety Code §11362.765) do not interfere with a patient's right to use medical marijuana as authorized under State Law (as defined below), nor do they criminalize the possession or cultivation of Medical Marijuana (as defined below) by classes of persons who are authorized to do so under State Law. Only Qualified Patient Members (as defined below), persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively under State Law. Medical Marijuana Collectives (as defined below) shall comply with all provisions of the Long Beach Municipal Code, State Law, and all other applicable local and state laws.

Nothing in this Chapter permits activities that are banned by federal, state, or local law.

5.89.015 Definitions

Unless the particular provision or the context otherwise requires, the definitions and provisions in this Section shall govern the construction, meaning, and application of words and phrases as used in this Chapter.

- A. “Attending Physician” shall have the same definition as provided in Cal. Health and Safety Code Section §11362.7 (as may be amended), which defines “Attending Physician” as an individual (1) who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California, and (2) who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- B. “Business License” shall mean the license issued by the Director of Financial Management to a Collective that has applied for a City of Long Beach business license in accordance with this Chapter.
- C. “Chief of Police” shall mean the Chief of the Long Beach Police Department (or his or her designee).
- D. “Concentrated Cannabis” shall have the same definition as provided in Cal. Health and Safety Code §11006.5 (as may be amended), which defines “Concentrated Cannabis” as the separated resin, whether crude or purified, obtained from marijuana.
- E. “Director of Financial Management” shall mean the Director of Financial Management for the City of Long Beach (or his or her designee).
- F. “Edible Medical Marijuana” shall mean any article used for human food, drink, confectionery, condiment or chewing gum (regardless of whether that article is simple, mixed or compound) that (1) contains physician-recommended quantities of Medical Marijuana, and (2) within the City of Long Beach at a Collective in accordance with state law and this Chapter.
- G. “Identification Card” shall have the same definition as provided in Cal. Health and Safety Code §11362.7 (as may be amended), which defines “Identification Card” as a document issued by the State Department of Health Services which (1) identifies a person authorized to engage in the medical use of marijuana, and (2) identifies the person’s designated primary caregiver (if any).
- H. “Management Member” shall mean a Medical Marijuana Collective Member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the

functions of president, vice president, director, operating officer, financial officer, secretary, treasure, or manager of the Collective.

- I. "Marijuana" shall have the same definition provided in California Health and Safety Code Section 11018 (as may be amended), which defines "Marijuana" as Cannabis Sativa L. (whether growing or not) (hereinafter, the "Plant"); the seeds thereof; the resin extracted from any part of the Plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the Plant, its seeds or resin. It does not include the mature stalks of the Plant, fiber produced from the stalks, oil or cake made from the seeds of the Plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- J. "Medical Marijuana" shall mean Marijuana used for medical purposes in accordance with California Health and Safety Code §§11362.5 et seq.
- K. "Medical Marijuana Collective" (hereinafter, the "Collective") shall mean an incorporated or unincorporated association, composed of four (4) or more Qualified Patient Members and their designated Primary Caregivers who associate at a Property (as defined below) within the City of Long Beach to collectively or cooperatively cultivate Marijuana for medical purposes or distribute that Medical Marijuana to Collective members and Management Members, in accordance with California Health and Safety Code §§11362.5, et seq. For purposes of this Chapter, the term Medical Marijuana "Cooperative" shall have the same meaning as Medical Marijuana Collective.
- L. "Park" or "Public Park" shall mean publicly owned natural or open areas set aside for active and passive public use for recreational, cultural or community service activities.
- M. "Primary Caregiver" shall have the same definition as provided in California Health and Safety Code §§ 11362.5 and 11362.7 (as may be amended), which define "Primary Caregiver" as an individual, designated by a Qualified Patient, who has consistently assumed responsibility for the housing, health, or safety of that Qualified Patient.
- N. "Property" shall mean the location or locations within the the City of Long Beach at which the Medical Marijuana Collective members and Management Members associate to collectively or cooperatively cultivate or distribute Medical Marijuana exclusively for this Collective members and Management Members.
- O. "Qualified Patient" shall mean a person who (1) is entitled to the protections of Health and Safety Code §11362.5 for Patient Members, and (2) may obtain and use marijuana for medical purposes upon the recommendation of an Attending Physician,

regardless of whether that person applied for and received a valid identification Card issued pursuant to State Law.

- P. "Reasonable Compensation" shall mean compensation commensurate with reasonable wages and benefits paid to employees of IRS-qualified nonprofit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked. The payment of a bonus shall not be considered "Reasonable Compensation."
- Q. "State Law" shall mean the state regulations set forth in the Compassionate Use Act and the Medical Marijuana Program Act, codified at California Health and Safety Code §§11362.5, et seq.
- R. "Personal Service Type Business." A Medical Marijuana Collectives shall be considered a personal service type business in the City of Long Beach with respect to issuing a Business License and setting taxes.
- S. "Sale" shall mean any sale, exchange, donation, reimbursement or barter.

5.89.020 Business License Required

It shall be unlawful for any person or entity to engage in, operate, or conduct a Medical Marijuana Collective on any Property, unless that Collective has obtained and continues to maintain in full force and effect a Business License.

5.89.030 Medical Marijuana Collective Business License

Any Medical Marijuana Collective seeking to operate a Collective in the City of Long Beach shall first fill out a Business License application provided by the Director of Financial Management (or his or her designee). If the Collective's location (a) meets the general requirements for doing business in a commercial, retail and/or industrial zone, and (b) meets the City of Long Beach's building code requirements for businesses that fall under the personal service section of the licensing code, the Collective shall be issued a Business License.

5.89.040 Operating Conditions

No Medical Marijuana Collective shall be allowed to operate in the City of Long Beach without meeting the following conditions and standards:

- A. The Collective's Property shall not be located in an area zoned in the City for exclusive residential use. Medical Marijuana Collectives shall not be permitted to operate in an exclusive residential zone as established pursuant to Title 21 of this Code.
- B. The Medical Marijuana Collective shall not be located within a one-thousand-five-hundred (1,500) foot radius of a public or private High School or Educational Partnership

High School (hereinafter, "EPHS") or within a one-thousand (1,000) foot radius of a public park, public beach or a public or private kindergarten, elementary, middle or junior high school. The distances specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Medical Marijuana Collective is located, without regard to intervening structures.

- C. The Medical Marijuana Collective shall not be located within a one-thousand (1,000) foot radius of any other Medical Marijuana Collective. The distance specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of any other Medical Marijuana Collective, to the closest property line of the lot on which the licensed Medical Marijuana Collective is located, without regard to intervening structures. Any Collective that had been permitted by the City Council to operate after February 14, 2012 shall be exempted from the requirements of this provision.
- D. Exterior building and parking area lighting on the Property shall be in compliance with all applicable provisions of this Code.
- E. Any exterior or interior sign visible from the exterior of the Property shall be unlighted.
- F. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry, and shall be equipped with latches that (1) may be released quickly from the inside to allow exit in the event of an emergency, and (2) are in compliance with all applicable building code provisions.
- G. Each Collective shall designate a Community Relations Liaison (hereinafter, the "Liaison"), who shall be at least eighteen (18) years of age; and shall provide the Liaison's name to the Director of Financial Management. The Liaison shall receive all complaints received by the Director of Financial Management (or his or her designee), regarding his or her own Collective. The Liaison shall have the responsibility and duty to address and promptly resolve all complaints. To address community complaints and concerns, the name and telephone number for the Liaison shall be made publicly available.
- H. The Property shall contain an odor-absorbing ventilation and exhaust system to ensure that odor generated inside the Property is not detected outside the Property.
- I. The Collective shall install and maintain a video surveillance system that monitors at least the front and rear of the Property. The surveillance system shall:
 - 1. Capture a full view of the public right-of-way and any parking lot under the control of the Collective.

2. Be of adequate quality, color rendition and resolution to allow the ready identification of any individual who commits a crime anywhere on or adjacent to the exterior of the Property.
3. Record and maintain video for a minimum of thirty (30) days.

Each Collective shall produce recordings from the video surveillance system to the Police Department of the City of Long Beach when a search warrant, subpoena or court order has been provided.

- J. The Property shall have a centrally monitored fire and burglar alarm system.
- K. A sign shall be posted in a conspicuous location inside the Property advising:
 1. The diversion of marijuana for non-medical purposes is a violation of State Law.
 2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code §647(h).
 4. This Medical Marijuana Collective is licensed in accordance with the laws of the City of Long Beach.
 5. The sale of marijuana and the diversion of marijuana for non-medical purpose are violations of State Law.
- L. Each Collective shall meet all applicable state laws consistent with the protection of the health, safety, and welfare of (1) the community, (2) Qualified Patient Members, and (3) Primary Caregivers.
- M. Collective cultivation of Medical Marijuana shall be limited to the Medical Marijuana Collective Members and Management Members.
- N. Cultivation of Medical Marijuana by the Medical Marijuana Collective Members and Management Members shall occur exclusively within the City of Long Beach.
- O. Every Medical Marijuana Collective shall maintain cultivation records, signed under penalty of perjury by each Management Member, that identify (1) the location within the City of Long Beach at which the Medical Marijuana was cultivated, and (2) the total number of Plants cultivated at each location.
- P. Representative samples of Medical Marijuana distributed by the Collective shall be analyzed by an independent laboratory to ensure that they are free of harmful pesticides and other contaminants regulated under local, state or federal law.

- Q. Any Medical Marijuana whose representative sample has tested positive for a harmful pesticide or other contaminant at a level which exceeds the local, state, or federal regulatory or statutory standards shall be promptly destroyed.
- R. Any Medical Marijuana provided to Collective Members shall be properly labeled in strict compliance with state and local laws.
- S. The operation of medical Marijuana Collectives shall be limited to the hours between nine o'clock (9:00) A. M. and eight o'clock (8:00) P. M.
- T. Any and all business identification signs comply with the provisions of Chapter 21.44 "On Premises Signs" as set forth in this Code.

5.89.050 Each Medical Marijuana Collective shall cultivate Medical Marijuana on a membership basis and in accordance with the needs of its members.

5.89.060 License Not Transferable and Required Conduct.

- A. A Business License issued pursuant to this Chapter shall become null and void if a Collective (1) closes or dissolves, and/or (2) relocates to a different Property.
- B. The lawful conduct of activity regulated by this Chapter by a Collective shall be limited to those activities expressly indicated on the Business License application.
- C. The holder of a Business License shall not allow non-members of a Collective to cultivate Medical Marijuana on the Collective's Property.

5.89.070 Maintenance of Records

- A. A Medical Marijuana Collective shall maintain the following records on the Property.
 1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.
 2. The full name, address and telephone number(s) and a fully legible copy of a government issued form of identification of each Collective member engaged in the management of the Collective and a description of the exact nature of the participation in the management of the Collective. Acceptable forms of government issued identification include, but are not limited to: Driver licenses or photo identity cards issued by State Department of Motor Vehicles (or equivalent) that meets REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents), or a Permanent Resident Card.
 3. The full name, address, and telephone number(s) of each Collective member and Management Member who participates in the Collective cultivation of Medical Marijuana.

4. The full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member; the date each member and management Member joined the Collective; the exact nature of each member's and management Member's participation in the Collective; and the status of each member and Management Member as a Qualified Patient or Primary Caregiver.

5. A written accounting of all cash and in-kind contributions, reimbursement, and reasonable compensation provided by the Collective Management Members and members of the Collective, and all expenditures and costs incurred by the Collective.

6. An inventory record documenting the dates and amounts of Medical Marijuana cultivated at the Property, and the daily amounts of Medical Marijuana stored on the Property.

7. Proof of a valid Business License issued by the Director of Financial Management Department, in accordance with this Chapter.

8. Any and all records described in §5.89.070 (A) shall be maintained by the Medical Marijuana Collective for a period of five (5) years, and shall be made available by the Collective to the City upon request, subject to the authority set forth in §5.89.080.

B. Annual Reports. Each Medical Marijuana Collective operating in the City shall submit to the City Manager (or his or her designee) an annual financial report (hereinafter, the "Annual Report") prepared by the Collective, using the following criteria.

1. Each Annual Report shall be filed and submitted every calendar year no later than April 30 for each preceding calendar year (for example a Collective's 2010 Annual Report shall be submitted to the City manager no later than April 30, 2011).

2. The Annual Report shall be a summary of the quarterly reports that were filed with the State Board of Equalization in the previous year.

3. The Annual Report shall document the number of Medical Marijuana transactions that took place during the reporting year to a Qualified Patient or Management Member for cash, credit, or in-kind contributions.

4. Appended to the Annual Report shall be a copy of any and all documents, records or forms submitted to the State Board of Equalization for the reporting year, including but not limited to Board of Equalization Form 401 (or its electronic equivalent) which in any manner documents transaction activities relating to the operation of the Medical Marijuana Collective.

5. Appended to the Annual Report shall be an accounting of the number of Plants or clones cultivated by the dispensary during the reporting year.

6. Any and all records or documents that serve as the basis for preparing the annual report shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available to the city upon request, pursuant to §5.89.080.

5.89.080 Inspection Authority

City representatives (Fire and Building inspectors) may enter and inspect the Property of every Medical Marijuana Collective between the hours of nine o'clock (9:00) A. M. and eight o'clock (8:00) P.M. or at any reasonable time to ensure compliance and enforcement of the provisions of City Codes. The Police Department may be allowed to enter the Property if invited by a member of the Collective or in case of an emergency. Otherwise access shall only be available to the Police Department through a properly executed search warrant, subpoena, or court order. It shall be unlawful for any Property owner, landlord, and lessee, Medical Marijuana Collective member or Manager Member or any other person having any responsibility over the operation of the Medical Marijuana Collective to refuse to allow, impede, obstruct or interfere with an inspection.

5.89.090 Existing Medical Marijuana Collectives

A. Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until it fully complies with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed before this Chapter was enacted shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.

5.89.100 Prohibited Activity

A. It shall be unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana for medical or non-medical purposes except as provided in this Chapter, and pursuant to all other applicable local and state law.

B. It shall be unlawful for any person to cause, permit or engage in any activity related to Medical Marijuana except as provided in this Chapter and in Health and Safety Code §§11362.5 et seq., and pursuant to all other applicable local and state law.

C. It shall be unlawful for any person to knowingly make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided to the City of Long Beach under this Chapter.

D. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, distribution or exchange of Medical Marijuana or of any Edible Medical Marijuana product to any non-Collective Management Member or Member.

E. No cultivation of Medical Marijuana on the Property shall be visible with the naked eye from any public or other private property, nor shall cultivated Medical Marijuana or dried Medical Marijuana be visible from the building exterior. No cultivation shall occur on the Property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

F. The manufacture of Concentrated Cannabis in violation of California Health and Safety Code §11379.6 is hereby banned.

G. No Medical Marijuana Collective shall be open to or provide Medical Marijuana to its members or Management Members between the hours of eight o'clock (8:00) P.M. and nine o'clock (9:00) A.M.

H. No person under the age of eighteen (18) shall be allowed on the Property, unless that minor is a Qualified Patient and is accompanied by his or her licensed Attending Physician, parent(s) or documented legal guardian.

I. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the property.

J. No dried Medical Marijuana shall be stored at the property in structures that are not completely enclosed, in an unlocked vault or safe, in any other unsecured storage structure, or in a safe or vault that is not bolted to the floor of the property.

K. Medical Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the Property, or in the parking areas of the Property or in those areas restricted under the provisions of California Health and Safety Code §11362.79, which include:

1. Any place where smoking is prohibited by law.
2. Within one thousand (1,000) feet of the grounds of a school, recreation center, or youth center.
3. While on a school bus.
4. While in a motor vehicle that is being operated.
5. While operating a boat

L. No person who has been convicted within the previous ten (10) years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance shall be engaged directly or indirectly in the management of the Medical Marijuana Collective nor, further, shall manage or handle the receipts and expenses of the Collective.

5.89.110 Violations and Enforcement.

A. Any person violating any provision of this Chapter or knowingly or intentionally misrepresenting any material fact in procuring the license herein provided for, shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than twelve (12) months, or both such fine and imprisonment.

B. Any person who engages in any Medical Marijuana Collective operations (1) after a Business License has been denied, or (2) after a Business License has been suspended or revoked; but before a new license is issued, shall be guilty of a misdemeanor.

C. Any violation of the terms and conditions of the Business License, of this Chapter, or of applicable local or state regulations and laws shall be grounds for suspending or revoking its license.

5.89.120 Suspension, Revocation, and Appeals Process

A. If a City Department determines that a Collective has failed to comply with any provision of this Chapter on at least three occasions, the Director of Financial Management shall revoke or suspend the Business License.

B. The Director of Financial Management shall notify a Collective that its license has been suspended or revoked by means of a dated written notice, which shall advise the Collective of its right to appeal the decision to the City Council. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based, and shall be filed with the Director of Financial Management within thirty (30) calendar days from the date the notice was mailed along with an appeal deposit, in an amount determined by the City Council by resolution. If an appeal is filed, a license may not be suspended or revoked before that appeal has been fully adjudicated.

C. The City Council shall conduct a hearing (hereinafter, the "City Council Hearing") on the appeal or refer the matter to a hearing officer pursuant to Chapter 2.93 of this Code, within forty-five (45) calendar days from the date the completed request for appeal was received by the Director of Financial Management, except where good cause exists to extend this period. The appellant shall be given at least fifteen (15) calendar days' written notice of the City Council Hearing. The City Council Hearing shall be conducted pursuant to Chapter 2.93 of this Code. The determination of the City Council on the appeal shall be final, unless the licensee chooses to file a court action within thirty (30) calendar days of that determination.

D. Whenever a Medical Marijuana Collective's license has been revoked or suspended, no other Business License application shall be considered for that Collective for a period of one (1) year from either (a) the date on which the notice of the revocation or suspension was mailed, or (b) the date of the final decision of the City Council, whichever is later.

5.89.130 Operative Date of Cultivation Requirement

Each Medical Marijuana Collective that has been issued a Business License pursuant to this Chapter shall have one-hundred-and-twenty (120) calendar days from the date the license is issued to comply with the Medical Marijuana cultivation requirements set forth in §5.89.040.

5.89.140 Severability

The provisions of this Chapter are severable. If any provision of this Chapter is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Petition Statistics

3/7/2013 4:56:41PM
LONG BEACH MEDICAL MARIJUANA COLLECTIVES
CITY OF LONG BEACH 2013

Petition ID:11966

Total Sigs Required	1,295
Total Sigs Submitted	43,159
Total Sample Size	1,295
Total Sigs Verified	1,295

TOTAL CHALLENGED

ADD	DIFFERENT ADDRESS	
	Total	95
AEV	INFO ENTERED BY CIRCULATOR	
	Total	28
CAN	CANCELED	
	Total	15
FP	FATAL PENDING	
	Total	35
MADD	PO BOX/MAILING ADDRESS	
	Total	1
NR	NOT REGISTERED	
	Total	106
SIG	MISMATCH SIGNATURE	
	Total	60
WDIST	WRONG DISTRICT	
	Total	16
TOTAL		356

TOTAL VALID : 939

Name & Address:
Gautam Dutta, Esq. (SBN 199326)
39270 Paseo Padre Pkwy. # 206
Fremont, CA 94538

ORIGINAL

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CITY CLERK
LONG BEACH, CA
13 MAY 21 PM 12:16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEREMY COLTHARP, an individual.
EDITH FRAZIER, an individual.

PLAINTIFF(S)

v.

LARRY HERRERA, in only his official capacity as
City Clerk for the City of Long Beach, and DOES 1-5:

DEFENDANT(S).

CASE NUMBER

CV 13-3263 ABC (FFMx)

SUMMONS

TO: DEFENDANT(S):

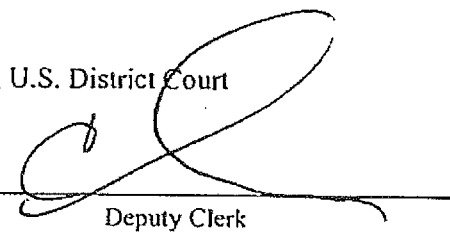
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint first amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gautam Dutta, whose address is 39270 Paseo Padre Pkwy. # 206, Fremont, CA 94538. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 5-16-13

By:



Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].



MAR 12

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COPY

FILED
CLERK, U.S. DISTRICT COURT
MAY 16 2013
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY

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7 Attorney for Plaintiffs

8 JEREMY COLTHARP and EDITH FRAZIER

9 IN THE UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 JEREMY COLTHARP, an
12 individual,
13 EDITH FRAZIER, an individual,
14 *Plaintiffs;*

15 vs.

16 LARRY HERRERA, in only his
17 official capacity as City Clerk for the
18 City of Long Beach, and DOES 1-5;
19 *Defendants.*

CASE NO. CV 13-3263 ABC (FFMx)

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

FEDERAL JURISDICTION INVOKED
PURSUANT TO 28 U.S.C. §1331,
§1983, AND §1367

20 INTRODUCTION

21 1. Plaintiffs Jeremy Coltharp and Edith Frazier bring this as-applied
22 constitutional challenge to defend and vindicate every voter's fundamental right to
23 express his or her political beliefs regarding proposed ballot measures.

24 2. Plaintiffs ask the Court to declare that California Elections Code §105
25 is *unconstitutional*, for that statute forced Defendant Herrera not to count the
26 lawfully executed signatures of Ms. Frazier and other City of Long Beach voters
27 who changed their voter-registration address *after* they signed Mr. Coltharp's
28 proposed ballot measure (the "Ballot Measure").

3. Furthermore, Defendant Herrera refused to count the lawfully executed

1 signatures of other voters who had signed the Petition, in violation of federal and
2 state law.

3 4. As a result, Defendant Herrera refused to count 97 percent of the
4 43,159 signatures collected by Mr. Coltharp. In so doing, Defendant Herrera
5 blocked the Ballot Measure from qualifying for a *special*¹ election.

6 5. Plaintiffs ask that Defendant Herrera be ordered to *count all 43,159*
7 *signatures* that were lawfully executed by voters who supported the Ballot
8 Measure. In this manner, Defendant Herrera will properly determine whether Mr.
9 Coltharp submitted the required number of signatures to qualify the Ballot Measure
10 for a special election.

11 6. Alternatively, Plaintiffs ask that Defendant Herrera be ordered to place
12 the Ballot Measure on the City of Long Beach's next regularly scheduled election
13 (April 8, 2014) – because it is *undisputed* that Mr. Coltharp has submitted the
14 required number of signatures to qualify the Ballot Measure for that election.

15 THE PARTIES

16 7. Plaintiffs Jeremy Coltharp and Edith Frazier live in, and are registered
17 to vote in, the City of Long Beach (the "City"). Mr. Coltharp proposed the ballot
18 measure at issue, and both he and Ms. Frazier signed a petition in support of that
19 ballot measure.

20 8. Defendant Larry Herrera, in his official capacity as City Clerk, serves
21 as the City's chief elections officer; and administers and enforces the Elections
22 Code with respect to the City's elections.²

23
24 ¹ If held as a *standalone* election, a special election called for a ballot measure must be held
25 within 88 to 103 days after the election has been ordered; if held as a *consolidated* election, that
26 election may be held within 180 days after the election has been ordered. See Elections Code
27 §§1405(a) & (a)(1).

28 ² Plaintiffs do not know the true names and capacities of Defendants DOES 1 through 5,
and therefore sue those Defendants by fictitious names. Based on his information and belief,
Plaintiffs allege that each of the fictitiously named Defendants is in some manner responsible for
the actions described in this Complaint. When the true identities and capacities of those
fictitiously named Defendants are determined, Plaintiffs will seek leave to amend this Complaint
to insert those identities and capacities.

1 **JURISDICTION AND VENUE**

2 9. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28
3 U.S.C. §1331 (federal-question jurisdiction), 28 U.S.C. §1983 (jurisdiction for
4 federal civil-rights violations), and 28 U.S.C. §1367 (supplemental jurisdiction).
5 The Court is a proper venue for this action, for Defendant Herrera performs the
6 duties of his office within the Central District of California.

7 **STATEMENT OF FACTS**

8 *General Background: California Initiative Law*

9 10. The California Constitution (art. ii §1) confers on voters the right to
10 propose and enact legislation through ballot measures (initiatives).

11 11. If a proposed ballot measure has been signed by at least **15 percent** of
12 its registered voters, the City Council must either (a) enact that ballot measure into
13 law, or (b) call a *special* election asking the voters to decide whether to enact that
14 ballot measure into law.³

15 12. If a proposed ballot measure has been signed by at least **10 percent** of
16 its registered voters, the City Council must either (a) enact that ballot measure into
17 law, (b) call a *special* election asking the voters to decide whether to enact that
18 ballot measure into law, or (c) place that ballot measure on the next *regularly*
19 *scheduled* City election.⁴ It would cost the City nearly \$1.5 million to administer a
20 special election.

21 13. Instead of examining every voter signature submitted by a proponent
22 of a ballot measure, an election official may evaluate a small, 3 percent sample. If
23 the number of valid signatures within that sample is within **95 to 110 percent** of the
24 prorated number of signatures required to qualify for a special election or regularly
25 scheduled election, then the election official *must fully examine the remaining 97*
26 *percent of signatures*.⁵ In so doing, the election official would determine whether

27 ³ Elections Code §9214.

28 ⁴ Elections Code §9215 & §1405.

⁵ Elections Code §9115(b).

1 the ballot measure qualifies for a special or regularly scheduled election.

2 14. If, however, the number of valid signatures within that sample totals to
3 at least **110 percent** of the prorated number of signatures required to qualify for a
4 special or regularly scheduled election, then the elections official *must* certify that
5 the ballot measure has qualified for either a special election (at least 15 percent of
6 voter signatures required) or the City's next regularly scheduled election (at least 10
7 percent of voter signatures required).⁶

8 15. Under state law, the Long Beach City Council has the power to call a
9 special election for *any* proposed ballot measure that receives at least 10 percent
10 voter support.⁷

11 16. After a proposed ballot measure has been given an official title and
12 summary, the proponent of that ballot measure must collect the required number of
13 voter signatures within **180 days**.⁸

14 17. Under Elections Code §100, every voter who is registered to vote in
15 the City has the right to sign any proposed ballot measure.

16 18. However, under Elections Code §105, election officials *are banned*
17 *from counting* the signature of any voter whose address listed on a proposed ballot
18 measure does not match the address listed for that voter in the official voter
19 database – even if that voter had moved and re-registered to vote *after* signing the
20 proposed ballot measure.

21 19. In contrast, if a voter moves *after* her vote-by-mail ballot has been
22 *received* by election officials, her vote *will be counted* under California law.⁹

23 20. Moreover, under federal law, if a voter moves within 30 days of a
24 Presidential election, she can vote using her *old* address, either by vote-by-mail or
25 in person – even if she has moved *out of state*.¹⁰

26 ⁶ Elections Code §9115, §9214 & §9215.

27 ⁷ Elections Code §9215(b).

28 ⁸ Elections Code §9208.

⁹ Elections Code §3019.

¹⁰ National Voter Registration Act of 1993, *codified at* 42 U.S.C. § 1973aa-1(e)

1 *Mr. Coltharp's Proposed Ballot Measure*

2 21. The California Compassionate Use Act¹¹ and Medical Marijuana
3 Program Act¹² give every patient the right to cultivate and possess medical
4 marijuana.

5 22. Pursuant to those state statutes, Mr. Coltharp filed the Ballot Measure
6 with Defendant Herrera. The Ballot Measure would authorize the City to regulate
7 and tax dispensaries of medical marijuana.

8 23. On August 21, 2012, Defendant Herrera issued a letter (*attached as*
9 *Exhibit 1*) containing the ballot title and summary for the Ballot Measure.

10 24. Immediately afterwards, Mr. Coltharp asked voters to sign a petition
11 (the "Petition", *attached as Exhibit 2*) asking that the Ballot Measure be placed on
12 the ballot.

13 25. On February 8, 2013, Mr. Coltharp submitted to the Clerk 28 boxes
14 containing 43,159 signatures in support of the Petition. Two of those signatures
15 were lawfully executed by Mr. Coltharp and Ms. Frazier.

16 *Numerical Basis for the City Clerk's (Defendant Herrera's) Calculations*

17 26. On March 7 and 8, 2013, Defendant Herrera told Mr. Coltharp that his
18 Petition did not contain the number of signatures required to qualify the Ballot
19 Measure for a special election.¹³

20 27. Before reaching that conclusion, Defendant Herrera stated that (1) the
21 City had a total of 223,617 registered voters, and (2) to qualify for a special
22 election, the Petition was required to contain at least 33,543 signatures (i.e., 15
23 percent of the 223,617 registered voters).¹⁴

24 28. Instead of examining all 43,159 signatures submitted by Mr. Coltharp,

25 ¹¹ Health & Safety Code §11362.5.

26 ¹² Health & Safety Code §11362.7 *et seq.*

27 ¹³ Although Defendant Herrera's Mar. 7, 2013 letter (*attached as Exh. 3*) stated that the
Petition had "failed", he subsequently clarified to Plaintiffs' counsel that he takes *no position* on
whether the Petition qualified for the City's next *regularly scheduled* election.

28 ¹⁴ Defendant Herrera's Signature Verification Calculations for the Petition, *attached as Exh.*
4.

1 Defendant Herrera chose to examine only a *3 percent sample* (i.e., 1,295 signatures)
2 of those signatures.

3 29. Based on the statutory formula set forth above,¹⁵ Defendant Herrera
4 stated that if at least 1,107 of the 1,295 signatures¹⁶ were deemed valid, the Ballot
5 Measure would qualify outright for a *special* election.

6 30. Based on the statutory formula set forth above,¹⁷ Defendant Herrera
7 stated that if between 957 and 1,106 of the 1,295 signatures¹⁸ were deemed valid,
8 he would be legally required to examine the remaining 41,864 (97 percent)
9 signatures submitted by Mr. Coltharp. In so doing, he would determine whether the
10 Ballot had received the support of at least 15 percent of the City's voters, and thus
11 qualified for a *special* election.

12 31. Based on the statutory formula set forth above,¹⁹ if at least 738 of the
13 1,295 signatures²⁰ were deemed valid, the City would be legally required to place
14 the Ballot Measure on the ballot no later than the next regularly scheduled election
15 (April 8, 2014).

16 *Results of the City Clerk's Examination of 3 Percent Sample*

17 32. After examining 1,295 of the 43,159 voter signatures, Defendant
18 Herrera told Mr. Coltharp that his Ballot Measure did not qualify for a special

19
20 ¹⁵ See ¶¶11-14 *supra*; Defendant Herrera's Signature Verification Calculations for the
Petition, *attached as Exh. 4*.

21 ¹⁶ I.e., 110 percent of the prorated amount of signatures required to qualify for a special
election. Here, the 1,295-signature sample was multiplied by the proration factor of 0.7771959
22 [i.e., 33,543 (15 percent of the City's 223,617 voters) divided by 43,159 (the total number of
signatures submitted by Mr. Coltharp)], then multiplied by 1.1 (i.e., 110 percent).

23 ¹⁷ See *supra* note 15.

24 ¹⁸ I.e., between 95 to 110 percent of the prorated amount of 33,543 signatures (i.e., 15
percent of the City's 223,617 voters) required to qualify for a special election. Here, the 1,295-
signature sample was multiplied by the proration factor of 0.7771959 [i.e., 33,543 (15 percent of
25 the City's voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)],
then multiplied by 0.95 (i.e., 95 percent).

26 ¹⁹ See *supra* note 15.

27 ²⁰ I.e., 110 percent of the prorated amount of 22,362 signatures (i.e., 10 percent of the City's
223,617 voters) to qualify for a regularly scheduled election. Here, the 1,295-signature sample
28 was multiplied by the proration factor of 0.5181306 [i.e., 22,362 (10 percent of the City's 223,617
voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)], then
multiplied by 1.1 (i.e., 110 percent).

1 election.

2 33. Specifically, Defendant Herrera deemed 939 of the 1,295 voter
3 signatures to be valid. Thus, according to Defendant Herrera, the Petition fell 18
4 signatures short of the 957 voter signatures necessary to trigger a full, 100 percent
5 examination of all 43,159 signatures.²¹

6 34. Significantly, it is *undisputed* that Mr. Coltharp submitted the number
7 of signatures required to qualify for the City's next *regularly scheduled* election
8 (April 8, 2014). To qualify for a regularly scheduled election, Mr. Coltharp was
9 required to submit 738 valid signatures. According to Defendant Herrera, Mr.
10 Coltharp submitted 939 valid signatures – an *excess* of 201 signatures.

11 35. To date, Defendant Herrera has refused to certify to the Long Beach
12 City Council that the Ballot Measure would qualify for the City's April 8, 2014
13 regularly scheduled election.

14 *The City Clerk's Errors*

15 36. Defendant Herrera challenged 356 signatures from the 1,295-signature
16 sample.²²

17 37. After Defendant Herrera notified Mr. Coltharp that the Ballot Measure
18 did not qualify for a special election, Mr. Coltharp carefully examined the 356
19 signatures that had been challenged by Defendant Herrera. Toward this end, Mr.
20 Coltharp made repeated visits to the City Clerk's office in Long Beach, as well as
21 the Los Angeles County Registrar's office in Norwalk.

22 38. Of those 356 signatures, Defendant Herrera unlawfully did not count
23 the signatures of at least 18 voters.²³

24 39. Of those 18 voters, 5 voters were not counted because they allegedly
25

26 ²¹ Defendant Herrera's Signature Verification Calculations for the Petition, *attached as* Exh.
4.

27 ²² Defendant Herrera's Mar. 7, 2013 Petition Statistics, *attached as* Exh. 5, at 2.

28 ²³ To honor the confidentiality of voter-registration files, Plaintiffs will identify the voters only by name and Petition signature number (*see* notes 25 through 28 *infra*). Should the Court require their actual addresses, Plaintiffs will provide them under seal.

1 had unproven voter-registration status. Their signatures were not counted due to
2 what Defendant Herrera called “Fatal Pending” errors.²⁴

3 40. Subsequently, Mr. Coltharp discovered errors that had prompted
4 Defendant Herrera not to count the signatures of those 5 voters. In response to Mr.
5 Coltharp’s inquiries, the Los Angeles County Registrar-Recorder *corrected two of*
6 *those errors.*²⁵ Moreover, the signatures of three other voters should also have been
7 counted, but were not counted due to errors made by Defendant Herrera.²⁶

8 41. Accordingly, the signatures of all 5 voters mentioned above *should*
9 *have been counted.*

10 42. An additional 11 voters changed their voter-registration address *after*
11 *they had signed Mr. Coltharp’s Petition.* Those voters continue to live within the
12 City, but now reside at a different address.

13 43. Thus, those 11 voters (including Plaintiff Edith Frazier) had the right
14 to sign the Petition under Elections Code §100. However, Elections Code §105
15 bans a voter’s signature from being counted if her address listed on the Petition did
16 not match that listed on the voter-registration database. Compelled by §105,
17 Defendant Herrera did not count the signatures of those 11 voters, and classified
18 them as not counted due to “Different Address”.²⁷

19 44. Finally, the signatures of 2 voters were erroneously not counted (they

20 ²⁴ Defendant Herrera’s Mar. 7, 2013 Petition Statistics, *attached as Exh. 5*, at 2.

21 ²⁵ The Los Angeles County Registrar-Recorder had entered incorrect addresses for Claydale
22 Bird (Petition signature no. 38559) and Raul Nunez (Petition signature no. 40752), but corrected
23 their addresses after receiving Mr. Coltharp’s inquiries.

24 ²⁶ Those three voters were Albert Jones (Petition signature no. 22183 – his address listed on
25 the voter-registration database was misread by Defendant Herrera); Clarke Dviche (Petition
26 signature no. 9 – her name was not located on the voter-registration database because it was
27 misspelled by Defendant Herrera); and Bart Verner (Petition signature no. 10842 – Defendant
28 Herrera erroneously stated that his address was not located within the City, when it in fact was
located with the City).

27 ²⁷ Defendant Herrera’s Mar. 7, 2013 Petition Statistics, *attached as Exh. 5*, at 2. The 11
28 Long Beach voters were Edith Frazier (Petition signature no. 43110), Lamar Wormsley (Petition
signature no. 3865), Georgina Hill (Petition signature no. 6546), Martin Thelonious (Petition
signature no. 10110), Marivica Shyman (Petition signature no. 15637), Harvey Hunt (Petition
signature no. 17866), Andrew Orlando (Petition signature no. 19609), Silvia Sandoval (Petition
signature no. 28740), Everett Carmody (Petition signature no. 32955), Awet Teame (Petition
signature no. 34141), and Margaret Olszewski (Petition signature no. 42591).

1 were misclassified under the category of “Different Address”), because Defendant
2 Herrera had looked up the voter registration of the *wrong names*.²⁸

3 *Plaintiffs’ Rejected Offer of Compromise*

4 45. As shown earlier, it is undisputed that Mr. Coltharp submitted
5 sufficient signatures in order to qualify his Ballot Measure for the City’s next
6 regularly scheduled election.

7 46. During phone conversations on April 8 and 10, 2013 and in an April
8 18, 2013 letter,²⁹ Plaintiffs offered to waive their potential right to a special
9 election, if the City Clerk agreed to place the Ballot Measure on the April 8, 2014
10 City election (i.e., the next regularly scheduled City election). By not holding a
11 special election, the City taxpayers will save nearly **\$1.5 million**.

12 47. Regrettably, the City Clerk did not agree to Plaintiffs’ proposed
13 compromise. On April 8 and 10, 2013, Plaintiffs told Defendant Herrera’s counsel
14 (the City Attorney) that, if he did not redress their grievances, they would file a
15 lawsuit against him in order to vindicate their fundamental rights. Plaintiffs further
16 told Defendant Herrera’s counsel that any such lawsuit would seek reasonable costs
17 and attorney’s fees from the City to the fullest extent allowable by law, by invoking
18 California Code of Civil Procedure §1021.5 and all other applicable state and
19 federal statutes.

20 **FIRST CLAIM FOR RELIEF (Voters Who Moved Within the City)**

21 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

22 (Amendments I & XIV and 42 U.S.C. § 1983)

23 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

24 48. The allegations of paragraphs 1 through 47 are hereby incorporated by

25 ²⁸ Instead of examining the voter registration of Milton Snell (Petition signature no. 4651),
26 Defendant Herrera mistakenly examined the registration of Matt Suey (who is registered to vote
27 at a different address). Furthermore, Defendant Herrera erroneously did not locate the correct
address for Valerie Gallaher Hall (Petition signature no. 10101), because he had looked for the
surname of “Hall”, not “Gallaher Hall”.

28 ²⁹ Attached as Exh. 6.

1 reference.

2 49. The conduct of Defendant Herrera violated Plaintiffs' fundamental
3 right to support and place a ballot measure on the City ballot, for he refused to
4 count the signatures of voters who re-registered their voter-registration address
5 *after* they had signed Mr. Coltharp's Petition. That fundamental right is protected
6 under the United States Constitution (Amendments I & XIV) and 42 U.S.C. §1983.

7 50. Plaintiffs suffered irreparable harm, because Defendant Herrera
8 unlawfully banned them from supporting and placing a ballot measure on the City
9 ballot. At the same time, Defendant Herrera illegally spent public funds to block
10 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
11 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
12 from implementing Elections Code §105 with respect to the Ballot Initiative and
13 other proposed ballot measures.

14 51. An actual controversy now exists between Plaintiffs and Defendant
15 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
16 States Constitution (Amendments I & XIV) and 42 U.S.C. §1983. The parties
17 therefore need a declaration from the Court regarding whether Defendant Herrera's
18 actions, as alleged in this Complaint, violated the United States Constitution
19 (Amendments I & XIV) and 42 U.S.C. §1983.

20 **SECOND CLAIM FOR RELIEF (Voters Who Moved Within the City)**

21 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

22 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

23 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

24 52. The allegations of paragraphs 1 through 47 are hereby incorporated by
25 reference.

26 53. The conduct of Defendant Herrera violated Plaintiffs' fundamental
27 right to support and place a ballot measure on the City ballot, for he refused to
28 count the signatures of voters who re-registered their voter-registration address

1 after they had signed Mr. Coltharp's Petition. That fundamental right is protected
2 under the United States Constitution's Due Process Clause (Amendment XIV) and
3 42 U.S.C. §1983.

4 54. Plaintiffs suffered irreparable harm, because Defendant Herrera
5 unlawfully banned them from supporting and placing a ballot measure on the City
6 ballot. At the same time, Defendant Herrera illegally spent public funds to block
7 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
8 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
9 from implementing Elections Code §105 with respect to the Ballot Initiative and
10 other proposed ballot measures.

11 55. An actual controversy now exists between Plaintiffs and Defendant
12 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
13 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
14 The parties therefore need a declaration from the Court regarding whether
15 Defendant Herrera's actions, as alleged in this Complaint, violated the United
16 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

17 **THIRD CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
18 **Signatures)**

19 *As-Applied Violation of California Law (Supplemental Claim)*

20 (California Constitution art. ii §1 & Elections Code §100)

21 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

22 56. The allegations of paragraphs 1 through 47 are hereby incorporated by
23 reference.

24 57. The conduct of Defendant Herrera violated Plaintiffs' right to support
25 and place a ballot measure on the City ballot. Namely, he refused to count lawfully
26 executed voter signatures supporting the Petition, in violation of California
27 Constitution art. ii §1 and Elections Code §100.

28 58. Plaintiffs suffered irreparable harm, because by disqualifying those

1 lawfully executed voter signatures, Defendant Herrera unlawfully banned them
2 from supporting and placing a ballot measure on the City's ballot. At the same
3 time, Defendant Herrera illegally spent public funds to disqualify those voter
4 signatures. Consequently, Plaintiffs are entitled to declaratory and permanent
5 injunctive relief to restrain Defendant Herrera from further violating Elections Code
6 §100 with respect to the Ballot Initiative and other proposed ballot measures.

7 59. An actual controversy now exists between Plaintiffs and Defendant
8 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
9 Constitution art. ii §1 and Elections Code §100. The parties therefore need a
10 declaration from the Court regarding whether Defendant Herrera's actions, as
11 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
12 Code §100.

13 **FOURTH CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
14 **Signatures)**

15 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

16 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

17 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

18 60. The allegations of paragraphs 1 through 47 are hereby incorporated by
19 reference.

20 61. The conduct of Defendant Herrera violated Plaintiffs' fundamental
21 right to support and place a ballot measure on the City ballot, for he refused to
22 count voter signatures that were lawfully executed in support of the Ballot Measure.
23 That fundamental right is protected under the United States Constitution's Due
24 Process Clause (Amendment XIV) and 42 U.S.C. §1983.

25 62. Plaintiffs suffered irreparable harm, because by disqualifying those
26 lawfully executed voter signatures, Defendant Herrera Defendant Herrera
27 unlawfully banned them from supporting and placing a ballot measure on the City's
28 ballot. At the same time, Defendant Herrera illegally spent public funds to

1 disqualify those voter signatures. Consequently, Plaintiffs are entitled to
2 declaratory and permanent injunctive relief to restrain Defendant Herrera from
3 further violating the United States Constitution's Due Process Clause (Amendment
4 XIV) and 42 U.S.C. §1983 with respect to the Ballot Initiative and other proposed
5 ballot measures.

6 63. An actual controversy now exists between Plaintiffs and Defendant
7 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
8 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
9 The parties therefore need a declaration from the Court regarding whether
10 Defendant Herrera's actions, as alleged in this Complaint, violated the United
11 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

12 **FIFTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

13 *As-Applied Violation of California Law (Supplemental Claim)*

14 (California Constitution art. ii §1 & Elections Code §9215)

15 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

16 64. The allegations of paragraphs 1 through 47 are hereby incorporated by
17 reference.

18 65. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
19 fundamental right to support and place a ballot measure on the City ballot, for he
20 refused to certify to the Long Beach City Council that Mr. Coltharp's Ballot
21 Measure has qualified for the City's next regularly scheduled election (April 8,
22 2014). That fundamental right is protected under California Constitution art. ii §1
23 and Elections Code §9215.

24 66. Plaintiffs suffered irreparable harm, because Defendant Herrera
25 unlawfully banned them from supporting and placing a ballot measure on the City's
26 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
27 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
28 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive

1 relief to order Defendant Herrera to comply with California Constitution art. ii §1
2 and Elections Code §9215.

3 67. An actual controversy now exists between Plaintiffs and Defendant
4 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
5 Constitution art. ii §1 and Elections Code §9215. The parties therefore need a
6 declaration from the Court regarding whether Defendant Herrera's actions, as
7 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
8 Code §9215.

9 **SIXTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

10 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

11 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

12 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

13 68. The allegations of paragraphs 1 through 47 are hereby incorporated by
14 reference.

15 69. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
16 fundamental right to support and place a ballot measure on the City ballot, for he
17 refused to certify to the Long Beach City Council that Mr. Coltharp's Ballot
18 Measure has qualified for the City's next regularly scheduled election (April 8,
19 2014). That fundamental right is protected under the United States Constitution's
20 Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

21 70. Plaintiffs suffered irreparable harm, because Defendant Herrera
22 unlawfully banned them from supporting and placing a ballot measure on the City's
23 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
24 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
25 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive
26 relief to restrain Defendant Herrera from further violating the United States
27 Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

28 71. An actual controversy now exists between Plaintiffs and Defendant

1 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
2 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
3 The parties therefore need a declaration from the Court regarding whether
4 Defendant Herrera's actions, as alleged in this Complaint, violated the United
5 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

6 **REQUEST FOR RELIEF**

7 Plaintiffs Jeremy Coltharp and Edith Frazier request the following relief from
8 the Court:

9 A. That the Court declare that Elections Code §105 is unconstitutional
10 and unenforceable, as applied to voters who re-registered their voter-registration
11 address *after* they had signed Mr. Coltharp's Petition.

12 B. That the Court declare that Defendant Herrera violated Plaintiffs'
13 fundamental rights under the United States Constitution (Amendments I & XIV &
14 Due Process Clause) and 42 U.S.C. §1983, by (1) implementing and enforcing
15 Elections Code §105 as to Mr. Coltharp's Petition and Ballot Measure, and (2)
16 illegally spending public funds to implement and enforce Elections Code §105.

17 C. That the Court issue a preliminary injunction prohibiting Defendant
18 Herrera, and all persons acting under his direction and control, (1) from
19 implementing and enforcing Elections Code §105 as to Mr. Coltharp's Petition and
20 Ballot Measure, and (2) from illegally spending public funds to implement and
21 enforce Elections Code §105.

22 D. That the Court declare that Defendant Herrera violated Plaintiffs'
23 fundamental rights under California Constitution art. ii §1 and Elections Code
24 §100, by refusing to count the lawfully executed signatures of voters who supported
25 Mr. Coltharp's Ballot Initiative.

26 E. That the Court order Defendant Herrera, and all persons acting under
27 his direction and control, to fully examine all 43,159 signatures submitted by Mr.
28 Coltharp, in order to determine whether his Ballot Measure qualifies for a special

1 election.

2 F. That the Court order Defendant Herrera, and all persons acting under
3 his direction and control, to count all voter signatures that were lawfully executed
4 in support of the Petition.

5 G. Alternatively, that the Court declare that Defendant Herrera violated
6 Plaintiffs' fundamental rights under California Constitution art. ii §1 and Elections
7 Code §9215, by (1) refusing to certify to the Long Beach City Council that Mr.
8 Coltharp's Ballot Measure has qualified for the April 8, 2014 City ballot, and (2)
9 illegally spending public funds to do so.

10 H. Alternatively, that the Court declare that Defendant Herrera violated
11 Plaintiffs' fundamental rights under the United States Constitution's Due Process
12 Clause (Amendment XIV) and 42 U.S.C. §1983, by (1) refusing to certify to the
13 Long Beach City Council that Mr. Coltharp's Ballot Measure has qualified for the
14 April 8, 2014 City ballot, and (2) illegally spending public funds to do so.

15 I. Alternatively, that the Court order Defendant Herrera to certify to the
16 Long Beach City Council that Mr. Coltharp's Ballot Measure has qualified for the
17 April 8, 2014 City ballot.

18 J. That the Court award Plaintiffs all reasonable expenses and costs,
19 including attorney's fees, pursuant to 42 U.S.C. §1988(b) and California Code of
20 Civil Procedure §1021.5.

21 K. That the Court award Plaintiffs all other relief deemed just and
22 equitable.

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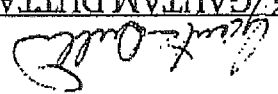
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DATED: May 13, 2013

Respectfully submitted,

By: 
GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

JEREMY COLTHARP AND

EDITH FRAZIER



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION
Monique De La Garza
Administrative Officer

ELECTIONS BUREAU
Poonam Dabiz
City Clerk Bureau Manager

LEGISLATIVE BUREAU
Merianne Nakagawa
City Clerk Bureau Manager

August 21, 2012

Jeremy Coltharp

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Long Beach, CA ~~XXXXXXXXXXXX~~

Dear Mr. Coltharp,

Pursuant to California Elections Code Section 9203, enclosed is the ballot title and summary of the proposed measure you submitted to this office on August 6, 2012, relating to regulation of medical marijuana collectives.

Prior to circulating the petition, be sure that you have achieved compliance with the requirements of the Elections Code, commencing with Section 9200 through 9226, and Long Beach Municipal Code Chapter 1.22.

Once you meet publication requirements of Election Code Section 9205, you will then have 180 days to file a petition, from the date upon which you receive the ballot title and summary provided herein. The petition must be filed during normal business hours; and if the petition is not filed within the time period permitted, the petition shall be void for all purposes.

As of May 21, 2012, the Los Angeles County Registrar's web site reports that there are 223,817 registered voters in the City of Long Beach; however, the signature qualification thresholds prescribed by Election Code Sections 9215 and 9216, is not certain until you publish the Notice of Intention.

I can be reached at (562) 570-6489, should you need to speak with me.

Sincerely,

Larry Herrera
City Clerk

Exh. 1

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BALLOT TITLE AND SUMMARY

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The Measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the City quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by Initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

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We the voters of the City of Long Beach California request that the ordinance be submitted immediately to a vote of the people at a special election.

The People of the City of Long Beach do ordain as follows:

Shall a ballot measure be submitted to the voters of the City of Long Beach at a special municipal election that will allow Medical Marijuana Collectives to operate in the City of Long Beach?

If approved by the voters of the City of Long Beach, that measure (hereinafter, the "Measure") shall add the following subsection to Chapter 3.80.243 Taxes on Service, of the Long Beach Municipal Code: Chapter 3.80.243A.

(1) An additional tax (hereinafter, the "Tax") shall be imposed on a licensed Medical Marijuana Collective, and shall not exceed four (4) percent of gross sales as reported to the California State Board of Equalization. The Tax shall be paid quarterly to the City of Long Beach and within ten (10) days of filing a report of quarterly sales in the State Board of Equalization. A copy of that report shall accompany the Tax payment to the City of Long Beach.

(a) The Tax shall be set annually by the City Council, and any failure of the City Council to set the Tax for the following calendar year shall automatically set the Tax rate for that year at two (2) percent of the gross sales as reported to the State Board of Equalization on a quarterly basis for that year.

The Measure shall also amend, in its entirety, Chapter 5.89 of the Long Beach Municipal Code as follows:
Chapter 5.89 MEDICAL MARIJUANA COLLECTIVE

5.89.010 Purpose and intent

A. It is the purpose and intent of this Chapter is to promote the public health, safety and welfare of the residents of the City of Long Beach. The Compassionate Use Act (Cal. Health & Safety Code §11362.5) and the Medical Marijuana Program Act (Cal. Health & Safety Code §11362.765) do not interfere with a patient's right to use medical marijuana as authorized under State Law (as defined below), nor do they criminalize the possession or cultivation of Medical Marijuana (as defined below) by classes of persons who are authorized to do so under State Law. Only Qualified Patient Members (as defined below), persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively under State Law. Medical Marijuana Collectives (as defined below) shall comply with all provisions of the Long Beach Municipal Code, State Law, and all other applicable local and state laws.

Nothing in this Chapter permits activities that are banned by federal, state, or local law.

5.89.015 Definitions

Unless the particular provision or the context otherwise requires, the definitions and provisions in this Section shall govern the construction, meaning, and application of words and phrases as used in this Chapter.

- A. "Attending Physician" shall have the same definition as provided in Cal. Health and Safety Code Section §11362.7 (as may be amended), which defines "Attending Physician" as an individual (1) who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California, and (2) who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- B. "Business License" shall mean the license issued by the Director of Financial Management to a Collective that has applied for a City of Long Beach business license in accordance with this Chapter.
- C. "Chief of Police" shall mean the Chief of the Long Beach Police Department (or his or her designee).
- D. "Concentrated Cannabis" shall have the same definition as provided in Cal. Health and Safety Code §11006.5 (as may be amended), which defines "Concentrated Cannabis" as the separated resin, whether crude or purified, obtained from marijuana.
- E. "Director of Financial Management" shall mean the Director of Financial Management for the City of Long Beach (or his or her designee).
- F. "Edible Medical Marijuana" shall mean any article used for human food, drink, confectionery, condiment or chewing gum (regardless of whether that article is simple, mixed or compound) that (1) contains physician-recommended quantities of Medical Marijuana, and (2) within the City of Long Beach at a Collective in accordance with state law and this Chapter.
- G. "Identification Card" shall have the same definition as provided in Cal. Health and Safety Code §11362.7 (as may be amended),

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- which defines "Identification Card" as a document issued by the State Department of Health Services which (1) identifies a person authorized to engage in the medical use of marijuana, and (2) identifies the person's designated primary caregiver (if any).
- H. "Management Member" shall mean a Medical Marijuana Collective Member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.
- I. "Marijuana" shall have the same definition provided in California Health and Safety Code Section 11018 (as may be amended), which defines "Marijuana" as Cannabis Sativa L. (whether growing or not) (hereinafter, the "Plant"); the seeds thereof; the resin extracted from any part of the Plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the Plant, its seeds or resin. It does not include the mature stalks of the Plant, fiber produced from the stalks, oil or cake made from the seeds of the Plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- J. "Medical Marijuana" shall mean Marijuana used for medical purposes in accordance with California Health and Safety Code §§11362.5 et seq.
- K. "Medical Marijuana Collective" (hereinafter, the "Collective") shall mean an incorporated or unincorporated association, composed of four (4) or more Qualified Patient Members and their designated Primary Caregivers who associate at a Property (as defined below) within the City of Long Beach to collectively or cooperatively cultivate Marijuana for medical purposes or distribute that Medical Marijuana to Collective members and Management Members. In accordance with California Health and Safety Code §§11362.5, et seq. For purposes of this Chapter, the term Medical Marijuana "Cooperative" shall have the same meaning as Medical Marijuana Collective.
- L. "Park" or "Public Park" shall mean publicly owned natural or open areas set aside for active and passive public use for recreational, cultural or community service activities.
- M. "Primary Caregiver" shall have the same definition as provided in California Health and Safety Code §§ 11362.5 and 11362.7 (as may be amended), which define "Primary Caregiver" as an individual, designated by a Qualified Patient, who has consistently assumed responsibility for the housing, health, or safety of that Qualified Patient.
- N. "Property" shall mean the location or locations within the the City of Long Beach at which the Medical Marijuana Collective members and Management Members associate to collectively or cooperatively cultivate or distribute Medical Marijuana exclusively for this Collective members and Management Members.
- O. "Qualified Patient" shall mean a person who (1) is entitled to the protections of Health and Safety Code §11362.5 for Patient Members, and (2) may obtain and use marijuana for medical purposes upon the recommendation of an Attending Physician, regardless of whether that person applied for and received a valid identification Card issued pursuant to State Law.
- P. "Reasonable Compensation" shall mean compensation commensurate with reasonable wages and benefits paid to employees of IRS-qualified nonprofit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked. The payment of a bonus shall not be considered "Reasonable Compensation."
- Q. "State Law" shall mean the state regulations set forth in the Compassionate Use Act and the Medical Marijuana Program Act, codified at California Health and Safety Code §§11362.5, et seq.
- R. "Personal Service Type Business." A Medical Marijuana Collectives shall be considered a personal service type business in the City of Long Beach with respect to issuing a Business License and setting taxes.
- S. "Sale" shall mean any sale, exchange, donation, reimbursement or barter.

5.89.020 Business License Required

It shall be unlawful for any person or entity to engage in, operate, or conduct a Medical Marijuana Collective on any Property, unless that Collective has obtained and continues to maintain in full force and effect a Business License.

5.89.030 Medical Marijuana Collective Business License

Any Medical Marijuana Collectives seeking to operate a Collective in the City of Long Beach shall first fill out a Business License application provided by the Director of Financial Management (or his or her designee). If the Collective's location (a) meets the general requirements for doing business in a commercial, retail and/or industrial zone, and (b) meets the City of Long Beach's building code requirements for businesses that fall under the personal service section of the licensing code, the Collective shall be issued a Business License.

5.89.040 Operating Conditions

No Medical Marijuana Collective shall be allowed to operate in the City of Long Beach without meeting the following conditions and standards:

- A. The Collective's Property shall not be located in an area zoned in the City for exclusive residential use. Medical Marijuana Collectives shall not be permitted to operate in an exclusive residential zone as established pursuant to Title 21 of this Code.
- B. The Medical Marijuana Collective shall not be located within a one-thousand-five-hundred (1,500) foot radius of a public or private High School or Educational Partnership High School (hereinafter, "EPHS") or within a one-thousand (1,000) foot radius of a public park, public beach or a public or private kindergarten, elementary, middle or junior high school. The distances specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Medical Marijuana Collective is located, without regard to intervening structures.
- C. The Medical Marijuana Collective shall not be located within a one-thousand (1,000) foot radius of any other Medical Marijuana Collective. The distance specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of any other Medical Marijuana Collective, to the closest property line of the lot on which the licensed Medical Marijuana Collective is located, without regard to intervening structures. Any Collective that had been permitted by the City Council to operate after February 14, 2012 shall be exempted from the requirements of this provision.
- D. Exterior building and parking area lighting on the Property shall be in compliance with all applicable provisions of this Code.
- E. Any exterior or interior sign visible from the exterior of the Property shall be unlighted.
- F. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry, and shall be equipped with latches that (1) may be released quickly from the inside to allow exit in the event of an emergency, and (2) are in compliance with all applicable building code provisions.
- G. Each Collective shall designate a Community Relations Liaison (hereinafter, the "Liaison"), who shall be at least eighteen (18) years of age; and shall provide the Liaison's name to the Director of Financial Management. The Liaison shall receive all complaints received by the Director of Financial Management (or his or her designee), regarding his or her own Collective. The Liaison shall have the responsibility and duty to address and promptly resolve all complaints. To address community complaints and concerns, the name and telephone number for the Liaison shall be made publicly available.
- H. The Property shall contain an odor-absorbing ventilation and exhaust system to ensure that odor generated inside the Property is not detected outside the Property.
- I. The Collective shall install and maintain a video surveillance system that monitors at least the front and rear of the Property. The surveillance system shall:
 - 1. Capture a full view of the public right-of-way and any parking lot under the control of the Collective.
 - 2. Be of adequate quality, color rendition and resolution to allow the ready identification of any individual who commits a crime anywhere on or adjacent to the exterior of the Property.
 - 3. Record and maintain video for a minimum of thirty (30) days.

Each Collective shall produce recordings from the video surveillance system to the Police Department of the City of Long Beach when a search warrant, subpoena or court order has been provided.

- J. The Property shall have a centrally monitored fire and burglar alarm system.
- K. A sign shall be posted in a conspicuous location inside the Property advising:
 - 1. The diversion of marijuana for non-medical purposes is a violation of State Law.

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- 2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 - 3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code §647(h).
 - 4. This Medical Marijuana Collective is licensed in accordance with the laws of the City of Long Beach.
 - 5. The sale of marijuana and the diversion of marijuana for non-medical purpose are violations of State Law.
 - L. Each Collective shall meet all applicable state laws consistent with the protection of the health, safety, and welfare of (1) the community, (2) Qualified Patient Members, and (3) Primary Caregivers.
 - M. Collective cultivation of Medical Marijuana shall be limited to the Medical Marijuana Collective Members and Management Members.
 - N. Cultivation of Medical Marijuana by the Medical Marijuana Collective Members and Management Members shall occur exclusively within the City of Long Beach.
 - O. Every Medical Marijuana Collective shall maintain cultivation records, signed under penalty of perjury by each Management Member, that identify (1) the location within the City of Long Beach at which the Medical Marijuana was cultivated, and (2) the total number of Plants cultivated at each location.
 - P. Representative samples of Medical Marijuana distributed by the Collective shall be analyzed by an independent laboratory to ensure that they are free of harmful pesticides and other contaminants regulated under local, state or federal law.
 - Q. Any Medical Marijuana whose representative sample has tested positive for a harmful pesticide or other contaminant at a level which exceeds the local, state, or federal regulatory or statutory standards shall be promptly destroyed.
 - R. Any Medical Marijuana provided to Collective Members shall be properly labeled in strict compliance with state and local laws.
 - S. The operation of medical Marijuana Collectives shall be limited to the hours between nine o'clock (9:00) A. M. and eight o'clock (8:00) P. M.
 - T. Any and all business identification signs comply with the provisions of Chapter 21.44 "On Premises Signs" as set forth in this Code.
- 5.89.050 Each Medical Marijuana Collective shall cultivate Medical Marijuana on a membership basis and in accordance with the needs of its members.

5.89.060 License Not Transferable and Required Conduct.

- A. A Business License issued pursuant to this Chapter shall become null and void if a Collective (1) closes or dissolves, and/or (2) relocates to a different Property.
- B. The lawful conduct of activity regulated by this Chapter by a Collective shall be limited to those activities expressly indicated on the Business License application.
- C. The holder of a Business License shall not allow non-members of a Collective to cultivate Medical Marijuana on the Collective's Property.

5.89.070 Maintenance of Records

- A. A Medical Marijuana Collective shall maintain the following records on the Property.
 - 1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.
 - 2. The full name, address and telephone number(s) and a fully legible copy of a government issued form of identification of each Collective member engaged in the management of the Collective and a description of the exact nature of the participation in the management of the Collective. Acceptable forms of government issued identification include, but are not limited to: Driver licenses or photo identity cards issued by State Department of Motor Vehicles (or equivalent) that meets REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents), or a Permanent Resident Card.
 - 3. The full name, address, and telephone number(s) of each Collective member and Management Member who participates in the Collective cultivation of Medical Marijuana.
 - 4. The full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member; the date each member and management Member joined the Collective; the exact nature of each member's and management Member's participation in the Collective; and the status of each member and Management Member as a Qualified Patient or Primary Caregiver.
 - 5. A written accounting of all cash and in-kind contributions, reimbursement, and reasonable compensation provided by the Collective Management Members and members of the Collective, and all expenditures and costs incurred by the Collective.
 - 6. An inventory record documenting the dates and amounts of Medical Marijuana cultivated at the Property, and the daily amounts of Medical Marijuana stored on the Property.
 - 7. Proof of a valid Business License issued by the Director of Financial Management Department, in accordance with this Chapter.
 - 8. Any and all records described in §5.89.070 (A) shall be maintained by the Medical Marijuana Collective for a period of five (5) years, and shall be made available by the Collective to the City upon request, subject to the authority set forth in §5.89.080.
- B. Annual Reports. Each Medical Marijuana Collective operating in the City shall submit to the City Manager (or his or her designee) an annual financial report (hereinafter, the "Annual Report") prepared by the Collective, using the following criteria.
 - 1. Each Annual Report shall be filed and submitted every calendar year no later than April 30 for each preceding calendar year (for example, Collective's 2010 Annual Report shall be submitted to the City manager no later than April 30, 2011).
 - 2. The Annual Report shall be a summary of the quarterly reports that were filed with the State Board of Equalization in the previous year.
 - 3. The Annual Report shall document the number of Medical Marijuana transactions that took place during the reporting year to a Qualified Patient or Management Member for cash, credit, or in-kind contributions.
 - 4. Appended to the Annual Report shall be a copy of any and all documents, records or forms submitted to the State Board of Equalization for the reporting year, including but not limited to Board of Equalization Form 401 (or its electronic equivalent) which in any manner documents transaction activities relating to the operation of the Medical Marijuana Collective.
 - 5. Appended to the Annual Report shall be an accounting of the number of Plants or clones cultivated by the dispensary during the reporting year.
 - 6. Any and all records or documents that serve as the basis for preparing the annual report shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available to the city upon request, pursuant to §5.89.080.

5.89.080 Inspection Authority

City representatives (Fire and Building Inspectors) may enter and inspect the Property of every Medical Marijuana Collective between the hours of nine o'clock (9:00) A. M. and eight o'clock (8:00) P.M. or at any reasonable time to ensure compliance and enforcement of the provisions of City Codes. The Police Department may be allowed to enter the Property if invited by a member of the Collective or in case of an emergency. Otherwise access shall only be available to the Police Department through a properly executed search warrant, subpoena, or court order. It shall be unlawful for any Property owner, landlord, and lessee, Medical Marijuana Collective member or Management Member or any other person having any responsibility over the operation of the Medical Marijuana Collective to refuse to allow, impede, obstruct or interfere with an inspection.

5.89.090 Existing Medical Marijuana Collectives

A. Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until it fully complies with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed before this Chapter was enacted shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.

5.89.100 Prohibited Activity

- A. It shall be unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana for medical or non-medical purposes except as provided in this Chapter, and pursuant to all other applicable local and state law.
- B. It shall be unlawful for any person to cause, permit or engage in any activity related to Medical Marijuana except as provided in this Chapter and in Health and Safety Code §§11362.5 et seq., and pursuant to all other applicable local and state law.
- C. It shall be unlawful for any person to knowingly make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided to the City of Long Beach under this Chapter.
- D. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, distribution or exchange of Medical

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Marijuana or of any Edible Medical Marijuana product to any non-Collective Management Member or Member.

E. No cultivation of Medical Marijuana on the Property shall be visible with the naked eye from any public or other private property, nor shall cultivated Medical Marijuana or dried Medical Marijuana be visible from the building exterior. No cultivation shall occur on the Property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

F. The manufacture of Concentrated Cannabis in violation of California Health and Safety Code §11379.6 is hereby banned.

G. No Medical Marijuana Collective shall be open to or provide Medical Marijuana to its members or Management Members between the hours of eight o'clock (8:00) P.M. and nine o'clock (9:00) A.M.

H. No person under the age of eighteen (18) shall be allowed on the Property, unless that minor is a Qualified Patient and is accompanied by his or her licensed Attending Physician, parent(s) or documented legal guardian.

I. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the property.

J. No dried Medical Marijuana shall be stored at the property in structures that are not completely enclosed, in an unlocked vault or safe, in any other unsecured storage structure, or in a safe or vault that is not bolted to the floor of the property.

K. Medical Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the Property, or in the parking areas of the Property or in those areas restricted under the provisions of California Health and Safety Code §11362.79, which include:

1. Any place where smoking is prohibited by law.
2. Within one thousand (1,000) feet of the grounds of a school, recreation center, or youth center.
3. While on a school bus.
4. While in a motor vehicle that is being operated.
5. While operating a boat.

L. No person who has been convicted within the previous ten (10) years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance shall be engaged directly or indirectly in the management of the Medical Marijuana Collective nor, further, shall manage or handle the receipts and expenses of the Collective.

5.89.110 Violations and Enforcement.

A. Any person violating any provision of this Chapter or knowingly or intentionally misrepresenting any material fact in procuring the license herein provided for, shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than twelve (12) months, or both such fine and imprisonment.

B. Any person who engages in any Medical Marijuana Collective operations (1) after a Business License has been denied, or (2) after a Business License has been suspended or revoked, but before a new license is issued, shall be guilty of a misdemeanor.

C. Any violation of the terms and conditions of the Business License, of this Chapter, or of applicable local or state regulations and laws shall be grounds for suspending or revoking its license.

5.89.120 Suspension, Revocation, and Appeals Process

A. If a City Department determines that a Collective has failed to comply with any provision of this Chapter on at least three occasions, the Director of Financial Management shall revoke or suspend the Business License.

B. The Director of Financial Management shall notify a Collective that its license has been suspended or revoked by means of a dated written notice, which shall advise the Collective of its right to appeal the decision to the City Council. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based, and shall be filed with the Director of Financial Management within thirty (30) calendar days from the date the notice was mailed along with an appeal deposit, in an amount determined by the City Council by resolution. If an appeal is filed, a license may not be suspended or revoked before that appeal has been fully adjudicated.

C. The City Council shall conduct a hearing (hereinafter, the "City Council Hearing") on the appeal or refer the matter to a hearing officer pursuant to Chapter 2.93 of this Code, within forty-five (45) calendar days from the date the completed request for appeal was received by the Director of Financial Management, except where good cause exists to extend this period. The appellant shall be given at least fifteen (15) calendar days' written notice of the City Council Hearing. The City Council Hearing shall be conducted pursuant to Chapter 2.93 of this Code. The determination of the City Council on the appeal shall be final, unless the licensee chooses to file a court action within thirty (30) calendar days of that determination.

D. Whenever a Medical Marijuana Collective's license has been revoked or suspended, no other Business License application shall be considered for that Collective for a period of one (1) year from either (a) the date on which the notice of the revocation or suspension was mailed, or (b) the date of the final decision of the City Council, whichever is later.

5.89.130 Operative Date of Cultivation Requirement

Each Medical Marijuana Collective that has been issued a Business License pursuant to this Chapter shall have one-hundred-and-twenty (120) calendar days from the date the license is issued to comply with the Medical Marijuana cultivation requirements set forth in §5.89.040.

5.89.140 Severability

The provisions of this Chapter are severable. If any provision of this Chapter is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

NOTICE OF INTENT TO CIRCULATE PETITION

NOTICE IS HEREBY GIVEN by the person(s) whose name appears hereon of their intention to circulate the petition within the City of Long Beach for two purposes; (1) Adding to Chapter 3.80.243 A., taxes on service the following subsections 1 and 1 (a), which sets out the tax rate for Medical Marijuana Collectives; and (2) amending in its entirety Chapter 5.89 Medical Marijuana Collectives, which authorizes the City of Long Beach to issue business licenses to Medical Marijuana Collectives.

Respectfully,

Jeremy Allen Coltharp

Long Beach, CA

23

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the city quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

VOLUNTEER CIRCULATOR

NOTICE TO THE PUBLIC
THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER.

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All Signers Must Be Registered Voters of the City of Long Beach, California			OFFICIAL USE ONLY
1	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
2	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
3	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
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	Your Signature as Registered to Vote	City or Town	
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6	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
7	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
8	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	

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Exh. 2

Initiative Measure To Be Submitted Directly To The Voters

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Initiative Measure To Be Submitted Directly To The Voters

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Table with 4 columns: Number, Print Your Name, Residence Address ONLY (No P.O. Box), City or Town, and OFFICIAL USE ONLY. Rows 17-24.

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Initiative Measure To Be Submitted Directly To The Voters

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Form with sections: All Signers Must Be Registered Voters of the City of Long Beach, California; DECLARATION OF PERSON CIRCULATING SECTION OF INITIATIVE PETITION (MUST BE IN CIRCULATOR'S OWN HANDWRITING); and Signature of Circulator.

27



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Manique De La Garza
Administrative Officer

ELECTIONS BUREAU

Popinn Davie
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Merianne Nakayama
City Clerk Bureau Manager

March 7, 2013

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

We have concluded verification of signatures on your petition calling for the Regulation of Medical Marijuana Collectives in the City of Long Beach. Our verification was conducted pursuant to Elections Code Section 9115 and the California Code of Regulations, Title 2, Division 7, Title 5 -- Election Petition Signature Verification Random Sampling Verification Methodology.

Pursuant to California Elections Code Section 9115(e), you are hereby notified that the total number of signatures to the petition is less than the number of qualified voter signatures required to find the petition sufficient; and therefore, the petition has failed.

Along with this letter, please find enclosed my Certificate of Insufficiency dated March 7, 2013.

Please do not hesitate to contact me should you have any questions, I can be reached at (562) 570-6489.

Sincerely,


Larry Herrera
City Clerk



CERTIFICATE OF INSUFFICIENCY OF INITIATIVE PETITION

I, Larry Herrera, City Clerk of the City of Long Beach, County of Los Angeles, State of California, hereby certify that:

The petition entitled "Initiative Regulation of Medical Marijuana Collectives" was filed with the City Clerk Office on February 8, 2013;

That said petition consists of 2,473 sections, and that each section contains signatures purporting to be signatures of qualified electors of the City of Long Beach, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affidavit stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of Los Angeles Registrar-Recorder/County Clerk's petition and signature verification system, I have determined the following facts regarding this petition:

- | | |
|---|--------|
| 1. Total number of signatures filed by proponents: | 43,159 |
| 2. Total number of signatures verified (3% per EC 9115(a)): | 1,295 |
| 3. Number of signatures found sufficient: | 939 |
| 4. Number of signatures found not sufficient: | 356 |
| 5. Number of signatures not sufficient because of Duplication: | 0 |
| 6. Total number of signatures deemed valid ((939/1,295) x 43,159) | 31,294 |

Based on this examination and in accordance with Elections Code Section 9115, the initiative petition is insufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Long Beach this 7th day of March, 2013.

Larry Herrera
City Clerk
City of Long Beach

Signature Verification Calculations

City Initiative Submitted to Voters

EC Div. 9, Ch. 2, Art. 1 -- §§ 9100-9190

Petition Title: LONG BEACH MEDICAL MARIJUANA COLLECTIVES

Initiative Petition Calculations

Registration (Reported by LARRCC 5/21/2012) 223,617
EC 9215

Total Signatures Submitted: 43,159

Signatures needed to qualify for election: 33,543
15% threshold -- EC 9214

The random sample shall include 500 signatures or 3% of those submitted, whichever is greater. EC 9115(a)

Number of signatures to verify: 1,295

Number of valid signatures: 939
1,107- PASS
957 - 1106 - WOULD REQUIRE FULL SIG
956 - INITIATIVE FAILS

Number of duplicate signatures: 0

Number of challenged signatures: 356 3/5/2013

SOS Signature Validation Formula

Factors	Description
A	Value of each signature
B	Penalty value for duplicate signature
C	Total value of all duplicate signatures
V	Adjusted number of valid signatures

Factor	Formula	
A	Total Signatures/signatures to verify = A	33.33
B	$A \times (A - 1) = B$ Penalty value for duplicate signatures	1,110
C	$B \times \text{the number of duplicate signatures} = C$	0
V	Signatures submitted x (valid signatures in sample/sample size) = V	31,294
	V - C = Statistically valid total	31,294

If the statistical sample is within 95% to 110% of the required number signatures, the elections official must verify ALL petition signatures. EC 9115(b)

Statistical total as percent of total needed: 93.30%

Initiative Fails to Qualify

Exh. 4

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Petition Statistics

3/7/2013 4:56:41PM

LONG BEACH MEDICAL MARIJUANA COLLECTIVES
CITY OF LONG BEACH 2013

Petition ID:11966

Total Sigs Required	1,295
Total Sigs Submitted	43,159
Total Sample Size	1,295
Total Sigs Verified	1,285

		TOTAL CHALLENGED
ADD	DIFFERENT ADDRESS	
	Total	95
AEV	INFO ENTERED BY CIRCULATOR	
	Total	28
CAN	CANCELED	
	Total	15
FP	FATAL PENDING	
	Total	35
MADD	PO BOX/MAILING ADDRESS	
	Total	1
NR	NOT REGISTERED	
	Total	106
SIG	MISMATCH SIGNATURE	
	Total	60
WDIST	WRONG DISTRICT	
	Total	16
TOTAL		356

TOTAL VALID : 939

Exh. 5

31

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

April 18, 2013

Via Electronic & U.S. Mail
The Honorable Robert E. Shannon
City Attorney
Attn: Charles Parkin, Esq.
Long Beach City Hall, 11th Floor
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Let the Voters Decide Whether to Regulate and Tax Medical Marijuana

Dear City Attorney Shannon:

We represent Long Beach resident Jeremy Coltharp, who recently filed a 43,159-signature petition (the "Petition") to authorize the City of Long Beach to regulate and tax the medical-marijuana dispensaries. As you know, the California Compassionate Use Act¹ and Medical Marijuana Program Act² give every patient the right to cultivate and possess medical marijuana.

We have reason to believe that our Petition contains sufficient voter signatures (i.e., 15 percent of the City's registered voters) to qualify for a special election.³ We hereby *demand* that the City review all 43,159 voter signatures submitted by Mr. Coltharp, so that the voters will know whether they have the *right* to vote on the Petition at a special election.

Alternatively, in the spirit of compromise, we ask that the Petition be placed on the ballot of the City's April 8, 2014 Primary Nominating Election.⁴ In this manner, Long Beach taxpayers would save nearly \$1.5 million that must otherwise be spent on a special election.

We appreciate the respectful dialogue we have had with City Clerk Larry Herrera and Assistant City Attorney Charles Parkin. However, we are disappointed that the City has denied our reasonable requests.

First, we are disappointed that the City Clerk has declined to review all 43,159 voter signatures, because he claims that our Petition fell 18 signatures short of the 957 signatures required⁵ to qualify for a full signature evaluation. However, the City Clerk's claim does not withstand careful analysis. In fact, 14 of those signatures were not

¹ *Codified at Health & Safety Code §11362.5.*

² *Codified at Health & Safety Code §11362.7 et seq.*

³ Elections Code §9214.

⁴ Elections Code §9215.

⁵ The City sampled 3 percent (1,259) of the 43,159 voter signatures submitted by Mr. Coltharp. Based on a statutory formula, if 957 signatures of that sample are valid, the City must fully review *all* 43,159 signatures. *See* Elections Code §9115. The City Clerk claims that 938 signatures from the 1,259-signature sample are valid.

32

Exh. 6

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

counted for an improper reason: after signing our Petition, those 14 voters had moved to a different address. Furthermore, an additional 4 signatures were not counted due to erroneous voter-database records. Because our Petition satisfies the requirements for a full signature evaluation, the City must review all 43,159 voter signatures that were submitted by Mr. Coltharp.

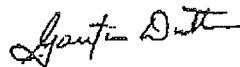
Second, we are disappointed that you have rejected our proactive effort to save Long Beach taxpayers nearly \$1.5 million dollars, by declining to place our proposed initiative on the City's April 8, 2014 Primary Nominating Election. By law, if a proposed initiative has been signed by at least 10 percent of registered voters, a city must either (a) enact that initiative into law, or (b) place that initiative on the ballot no later than the next regular municipal election.⁶

Here, it is beyond question that our Petition was signed by at least 10 percent of Long Beach voters. Therefore, the City *must* either (a) enact the proposed initiative into law, or (b) place that initiative *on the ballot* no later than the next regular municipal election (here, April 8, 2014). See, e.g., *MHC Financing v. City of Santee* (2005) 125 Cal.App.4th 1372, 1383 & n. 11; *Native American Sacred Site & Environmental Protection Ass'n. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 966-67.

Unless this matter is resolved by Apr. 24, 2013, we will have no choice but to (1) ask a court to vindicate the rights of all Long Beach voters, and (2) seek all reasonable attorney's fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure.

We hope that the City will let the voters decide whether to regulate and tax medical marijuana. We look forward to your prompt response.

Sincerely,



Gautam Dutta

Cc: The Mayor, Members of the City Council, and the City Clerk

⁶ Elections Code §9215 & §1405.

00/00/2013 12:19:27 FAX 2132498990
May-07-2013 10:31 AM

NATIONWIDE LEGAL

PAGE. 1/ 2

FILED

COPY

13 MAY -7 PM 3:05

COURT CLERK
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

1 GAUTAM DUTTA, ESQ. (State Bar No. 199326)
2 39270 Paseo Padre Parkway # 206
3 Fremont, CA 94538
4 Telephone: 415.236.2048
5 Email: Dutta@BusinessandElectionLaw.com
6 Fax: 213.405.2416

BY: _____

7 Attorney for Plaintiffs

8 JEREMY COLTHARP and EDITH FRAZIER

9 IN THE UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 JEREMY COLTHARP, an
12 individual,

13 EDITH FRAZIER, an individual,
14 *Plaintiffs;*

15 vs.

16 LARRY HERRERA, in only his
17 official capacity as City Clerk for the
18 City of Long Beach, and DOES 1-5;

19 *Defendants.*

CASE NO. 03263-ABC(FFM)

20 NOTICE OF INTERESTED
21 PARTIES

22 The undersigned, counsel of record for Plaintiffs Jeremy Coltharp and Edith
23 Frazier, certifies that the following listed party (or parties) may have a pecuniary
24 interest in the outcome of this case. These representations are made to enable the
25 Court to evaluate possible disqualification or recusal:

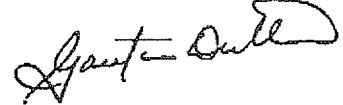
26 *No party has or may have a pecuniary interest in the outcome of this case.*
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NOTICE OF INTERESTED PARTIES

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DATED: May 6, 2013

Respectfully submitted,

By: 
GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs
JEREMY COLTHARP AND
EDITH FRAZIER

ORIGINAL

13 MAY - 7 PM 3:05

GAUTAM DUTTA, ESQ. (State Bar No. 199326)
39270 Paseo Padre Parkway # 206
Fremont, CA 94538
Telephone: 415.236.2048
Email: Dutta@BusinessandElectronLaw.com
Fax: 213.405.2416

Attorney for Plaintiffs
JEREMY COLTHARP and EDITH FRAZIER

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF RELATED CASES

CASE NO. 13-03263-ABC (FFM)

JEREMY COLTHARP, an individual,
EDITH FRAZIER, an individual,
Plaintiffs:
vs.
LARRY HERRERA, in only his official capacity as City Clerk for the City of Long Beach, and DOBS 1-5;
Defendants.

There are no actions currently pending before the Court that would be deemed related under L.R. 83-1.3.1.

NOTICE OF RELATED CASES

1
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DATED: May 6, 2013

Respectfully submitted,

Gautam Dutta

By: GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

JEREMY COLTHARP AND

EDITH FRAZIER

NOTICE OF RELATED CASES

FILED

13 MAY -7 PM 3:06

CLERK OF U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEREMY COLTHARP, EDITH FRAZIER,
PLAINTIFF(S)

CASE NUMBER

CV13- 3263 ABC (FFMx)

V.

LARRY HERRERA, ET AL.,
DEFENDANT(S)

NOTICE TO PARTIES OF
COURT-DIRECTED ADR PROGRAM

NOTICE TO PARTIES:

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. See Civil L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. See Civil L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. See General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, www.cacd.uscourts.gov, under "ADR."

Pursuant to Civil L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties before the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. See Civil L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U.S. District Court

Dated: Tuesday, May 7, 2013

By: JPRADO

Deputy Clerk

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Counsel are required to furnish and discuss this Notice with their clients.

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come prepared to discuss the parties' choice of ADR option (settlement conference before a magistrate judge; Court Mediation Panel; private mediation) at the initial scheduling conference. Counsel are also required to indicate the client's choice of ADR option in advance of that conference. See Civil L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

Of the more than 9,000 civil cases filed in the District annually, less than 2 percent actually go to trial. The remaining cases are, for the most part: settled between the parties; voluntarily dismissed; resolved through Court-directed or other forms of ADR; or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, www.cacd.uscourts.gov, under "ADR."

TENTATIVE

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 JEREMY COLTHARP, an individual,)
12 EDITH FRAZIER, an individual,)
13 Plaintiffs,)

CASE NO.: CV 13-3263 ABC (FFMx)

14 v.)

ORDER DENYING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

15 LARRY HERRERA, in only his)
16 official capacity as City Clerk)
17 for the City of Long Beach, and)
18 DOES 1-5,)
Defendant.)

19 Pending before the Court is Plaintiffs Jeremy Coltharp and Edith
20 Frazier's Motion for Preliminary Injunction, filed on July 22, 2013.
21 (Docket No. 9.) Defendant Larry Herrera opposed on August 12, 2013
22 and Plaintiffs replied on August 20, 2013. (Docket Nos. 14, 17.) The
23 Court heard oral argument on Monday, September 9, 2013. For the
24 reasons below, the motion is **DENIED**.

25 **I. BACKGROUND**

26 This case involves Plaintiffs Jeremy Coltharp and Edith Frazier's
27 constitutional challenge to the application of the California
28

1 Elections Code by Defendant Larry Herrera, in his official capacity as
2 Long Beach City Clerk, which resulted in a refusal to certify
3 Plaintiffs' ballot measure for a special election.

4 **A. Procedural Requirements for Enacting Ballot Measures**

5 **1. Voter-Initiated Ballot Measures**

6 For voter-initiated ballot measures like the one at issue in this
7 case, the proponent of the measure must collect the required number of
8 voter signatures within 180 days. Cal. Elections Code ("Elec. Code")
9 § 9208.

10 If a proposed ballot measure has been signed by at least 15
11 percent of the City's registered voters, the City Counsel must either
12 (a) enact the ballot measure into law, or (b) call a special election
13 asking the voters to decide whether to enact that ballot measure into
14 law. Elec. Code § 9214. It would cost the City nearly \$1.5 million
15 to administer a special election. (Answer [Docket No. 7] ¶ 7; First
16 Amended Compl. ["FAC"] ¶ 12; Dutta Decl. ¶ 3.)

17 If a proposed ballot measure has been signed by at least 10
18 percent of the City's registered voters, the City Council must either
19 (a) enact that ballot measure into law, or (b) call a special election
20 asking the voters to decide whether to enact that ballot measure into
21 law, or (c) place that ballot measure on the next regularly scheduled
22 City election. Elec. Code §§ 9215, 1405.

23 When the number of signatures on a proposed ballot measure
24 exceeds 500, the Elections Code permits Defendant to initially examine
25 a three percent sample instead of examining every signature on the
26 petition. Elec. Code § 9115(a). If the number of valid signatures
27 within that sample is within **95 to 110 percent** of the prorated number
28 of signatures required to qualify for a special or regularly scheduled

1 election, Defendant must fully examine the remaining signatures.
2 Elec. Code § 9115(b). Upon review, Defendant would then determine
3 whether the ballot measure has achieved the requisite number of
4 signatures to qualify for a special or regularly scheduled election.

5 If the number of valid signatures within the three percent sample
6 equals or exceeds **110 percent** of the prorated number of signatures
7 required to qualify for a special or regularly scheduled election,
8 Defendant must certify that the ballot measure has qualified for
9 either a special election (at least 15 percent of voter signatures
10 required) or the City's next regularly scheduled election (at least 10
11 percent of voter signatures required). Elec. Code §§ 9115, 9214,
12 9215.

13 If the petition lacks a sufficient number of valid signatures, no
14 action shall be taken on the petition. Id. § 9115(e).

15 **2. How Signatures Are Verified and Counted**

16 The Elections Code dictates exactly how Defendant is to verify
17 and count signatures on a ballot measure. Elections Code section 100
18 states, "[O]nly a person who is an eligible registered voter at the
19 time of signing the petition or paper is entitled to sign it."
20 Elections Code section 105 provides, "[T]he elections official shall
21 determine that the residence address on the petition . . . is the same
22 as the residence address on the affidavit of registration. If the
23 addresses are different . . . the affected signature shall not be
24 counted as valid." The affidavit of registration is the individual's
25 listed address in the official voter database. See Declaration of
26 Larry Herrera ¶ 5.

27 Thus, if the voter has moved and re-registered to vote within the
28 same city after signing the proposed ballot measure but before the

1 signatures have been counted, his or her signature will not be counted
2 because the address listed does not match the address in the official
3 voter database. (Mem. at 9.)

4 In contrast, if a voter has moved after the proposed ballot
5 measure has been received by election officials, her vote will be
6 counted under California law. Elec. Code § 3019.

7 **3. City Council-Initiated Ballot Measures**

8 Elections Code section 9215(b) gives the City Council the power
9 to call a special election for any proposed ballot measure that
10 receives at least 10 percent voter support. The Long Beach City
11 Charter gives the City Council the power to put a ballot measure on a
12 special or regularly scheduled election "on its own motion." Long
13 Beach City Charter § 2001.

14 **B. Plaintiff Coltharp's Proposed Ballot Measure**

15 The proposed ballot measure, entitled "Regulation of Marijuana
16 Collectives," seeks to repeal the City's current ban on medical
17 marijuana collectives and authorize the City to regulate and tax
18 dispensaries of medical marijuana. Plaintiff Coltharp filed the
19 measure pursuant to California's Compassionate Use Act and Medical
20 Marijuana Program Act. (Health & Saf. Code §§ 11362.5, 11362.7.)¹
21 The interplay between California's ability to pass laws regulating
22 medical marijuana dispensaries and the federal Controlled Substances
23 Act has been the subject of litigation, especially as it pertains to

24
25 ¹ Plaintiffs also cite to City of Riverside v. Inland Empire
26 Patients Health and Wellness Center, 56 Cal.4th 729 (2013), for the
27 proposition that these acts give cities the power to regulate and tax
28 medical marijuana dispensaries ("MMDs"). In City of Riverside, the
California Supreme Court held that the acts do not preempt local bans
on MMDs, upholding Riverside's zoning ordinance which banned MMDs on
the grounds that they constituted a public nuisance. Id. at 752.

1 whether federal law preempts California law in this regard.²

2 On August 21, 2012, Defendant issued a letter containing the
3 official ballot title and summary. (FAC, Ex. 1.) Plaintiff Coltharp
4 then circulated a petition asking that the measure be placed on the
5 ballot. (*Id.*, Ex. 2.) Notably, the express language of the petition
6 only called for the initiative to be placed before the electorate on a
7 special election and did not reference a general election. (Opp. at
8 3; FAC, Ex. 1.) On February 8, 2013, Plaintiff Coltharp submitted to
9 Defendant 28 boxes containing 43,159 petition signatures, including
10 those of Plaintiffs. Plaintiffs allege it cost \$132,300 and took
11 nearly six months to collect the signatures. (Declaration of Gautam
12 Dutta ¶ 2.) Defendants counter that Plaintiffs did not personally
13 contribute that money; instead, the vast majority of the contributions
14 came from organizations associated with marijuana collectives. (Opp.
15 at 9; Ex. B.)

16 **C. Numerical Breakdown of Signatures on Plaintiff Coltharp's**
17 **Proposed Ballot Measure**

18 On March 7 and 8, 2013, Defendant informed Plaintiff Coltharp
19 that his petition did not contain the requisite number of signatures
20 to qualify for a special election. (Coltharp Decl. ¶ 7; Frazier Decl.

21
22 ² It is worth noting that the City of Long Beach currently bans
23 medical marijuana dispensaries. Long Beach Mun. Code § 5.89.010
24 (2013). An earlier ordinance regulating medical marijuana collectives
25 within the City was struck down as unlawful in Pack v. City of Long
26 Beach, 199 Cal. App. 4th 1070 (2001). In Pack, the California Court
27 of Appeal held that an ordinance regulating and permitting marijuana
28 collectives was preempted by the Federal Controlled Substances Act
(CSA) because it "authorized the use of medical marijuana rather than
merely decriminalizing its use under state law." *Id.* at 1093. The
court explained that "the permits . . . authorize the operation of
collectives by those which hold them. As such, the permit provisions,
including the substantial application fees and renewal fees, and the
lottery system, are federally preempted." *Id.* at 1095.

1 ¶ 5.) Defendant explained that (1) the City had a total of 223,617
2 registered voters, and (2) to qualify for a special election, the
3 petition was required to contain at least 33,543 signatures (i.e., 15
4 percent of registered voters). (FAC, Ex. 4.)

5 Because the 43,159 petition signatures exceeded 500 signatures,
6 Defendant began by analyzing a three percent sample (i.e., 1,295
7 signatures) in accordance with Elections Code section 9115(a). The
8 Los Angeles County voter registration computer system generated a
9 random selection of signatures. (Herrera Decl. ¶ 4.) Defendant
10 compared the signature and the resident address on the petition with
11 information located on the Los Angeles County DIMS Voter Registration
12 System. Id. ¶ 5.

13 Of the 1,295 signatures, 110 percent of the prorated amount of
14 signatures required to qualify for a special election would be **1,107**
15 signatures.³ Obtaining between 95 to 110 percent of the prorated
16 amount of signatures needed to qualify for a special election (i.e.,
17 between **957**⁴ and **1,106** signatures) would have required Defendant to
18 count all of the remaining signatures. If, after a full count, at
19 least 15 percent of the City's voters supported the measure, it would
20 qualify for a special election.

21
22 ³ The 1,107 figure is obtained by, first, determining the number
23 of signatures required to qualify for special election, i.e., 15
24 percent of the City's 223,617 voters, which is 33,543 voters. That
25 number is then divided by the number of signatures submitted by
26 Plaintiff Coltharp (i.e., 43,159 signatures) and multiplied by 1.1 to
arrive at .854915, to arrive at the proration factor to apply to the
sample (i.e., 1,295 signatures) that reflects 110% of signatures
needed to qualify for special election. Multiplying 1,295 by .854915
rounds to 1,107 signatures. (Mem. at 10, n. 25.)

27 ⁴ The 957 figure is obtained the same way as described in the
28 footnote above, except that the 1.1 multiplier is replaced with .95.
(Mem. at 10, n. 26.)

1 After examining the three percent sample (1,295 signatures),
2 Defendant determined that 939 signatures were valid and 356 signatures
3 were invalid. Thus, the petition fell 18 signatures short of the 957
4 voter signatures necessary to trigger full examination of all 43,159
5 signatures. Based on the disqualification of the 356 signatures and
6 pursuant to Elections Code section 9115(e), no further action was
7 taken on the petition.

8 Plaintiffs challenge Defendant's determination, arguing that
9 Defendant unlawfully did not count the signatures of at least 18
10 voters. (Coltharp Decl. ¶¶ 19-23.) Defendant responds by submitting
11 as Exhibit A to his opposition a list of the 18 voters and the reasons
12 their signatures were not qualified. In general, these reasons
13 included: residence address on the petition differs from signer's
14 affidavit of registration, signer illegible on affidavit of
15 registration, signer failed to complete affidavit of registration, and
16 surname did not match affidavit of registration, all of which
17 prevented Defendant from reconciling voters' addresses. (Opp., Ex.
18 A.)

19 **D. Plaintiffs' "Offer of Compromise"**

20 Plaintiffs offered to waive any right to a full count of all
21 43,159 petition signatures and special election if Defendant agreed to
22 place the ballot measure on the next regularly scheduled City election
23 (April 8, 2014). (FAC, Ex. 6; Dutta Decl. ¶ 3.) Plaintiffs claim
24 that by voting on the measure at its next regularly scheduled election
25 instead of holding a special election, the City will save nearly \$1.5
26 million.

27 Defendant responds that this "offer of compromise" is illusory
28 because Plaintiffs' ballot measure never requested placement on the

1 next regularly scheduled City election. Defendant contends it would
2 be a violation of due process to "interlineate" Plaintiffs' ballot
3 measure with a proposal that the signatories to the petition never
4 reviewed nor supported. (Opp. at 11-12.)

5 **II. LEGAL STANDARD**

6 "A plaintiff seeking a preliminary injunction must establish that
7 he is likely to succeed on the merits, that he is likely to suffer
8 irreparable harm in the absence of preliminary relief, that the
9 balance of hardships tips in his favor, and that an injunction is in
10 the public interest." Winter v. Natural Res. Defense Council, Inc.,
11 555 U.S. 7, 20 (2008); Marlyn Nutraceuticals, Inc. v. Mucos Pharma
12 GmbH & Co., 571 F.3d 873, 877 (9th Cir. 2009). This recitation of the
13 requirements for a preliminary injunction did not completely erase the
14 Ninth Circuit's "sliding scale" approach, which provided that "the
15 elements of the preliminary injunction test are balanced, so that a
16 stronger showing of one element may offset a weaker showing of
17 another." Vanguard Outdoor, LLC v. City of Los Angeles, 648 F.3d 737,
18 739 (9th Cir. 2011).

19 "In one version of the 'sliding scale,' a preliminary injunction
20 could issue where the likelihood of success is such that serious
21 questions going to the merits were raised and the balance of hardships
22 tips sharply in [plaintiff's] favor." Id. at 740 (internal quotation
23 marks omitted; brackets in original). This "serious questions" test
24 survived Winter. Id. Therefore, "serious questions going to the
25 merits and a hardship balance that tips sharply in the plaintiff's
26 favor can support issuance of an injunction, so long as the plaintiff
27 also shows a likelihood of irreparable injury and that the injunction
28 is in the public interest." Id. (internal quotation marks omitted).

1 **III. DISCUSSION**

2 The parties have two very different views of this litigation.
3 Plaintiffs' FAC is styled as a constitutional rights case, focusing on
4 the right to political speech and the petition process. They argue
5 that Defendant's finding that certain signatures were invalid amounts
6 to a violation of the First and Fourteenth Amendments of the United
7 States Constitution, 42 U.S.C. § 1983, and a violation of the
8 California Constitution and California Elections Code. In contrast,
9 Defendant sees this case as involving the limits of ministerial
10 discretion and whether, under the standards set forth in the
11 California Elections Code, Defendant wrongfully invalidated
12 signatures.

13 The Court agrees with Defendant's view of the case. As explained
14 more fully below, issuance of the relief sought by Plaintiffs'
15 preliminary injunction motion would directly contravene the procedures
16 set forth in the California Election Code.

17 **A. Plaintiffs Have Not Shown a Likelihood of Success on the**
18 **Merits**

19 **1. Defendant Acted Reasonably in Accordance With the**
20 **California Elections Code**

21 The standard for court review of an election official's
22 ministerial decision places considerable weight on the official's
23 findings. Wheelright v. County of Marin, 2 Cal.3d 448 (1970). The
24 clerk's "duties are ministerial but they are not mechanical." Id. at
25 455. Where "the dissimilarities are not so minor and the similarities
26 are not so great that only one conclusion can be made as to the
27 validity or invalidity of the signature, and where the court finds
28 that in acting upon these dissimilarities and other indicia the clerk

1 was not acting unreasonably or arbitrarily in finding them spurious,
2 the court must accept the clerk's determination[.]” Id. at 456.
3 “[T]he court should defer to the factual determination of the
4 elections official where he or she has acted reasonably and not acted
5 arbitrarily or fraudulently.” Mapstead v. Anchundo, 63 Cal. App. 4th
6 246, 271 (1998) (holding that trial court erred in ordering nine
7 signatures to be counted as valid because “the evidence does not
8 support a determination that the Registrar acted unreasonably,
9 arbitrarily or fraudulently in disallowing these signatures”).

10 The Court has examined the Defendant's list of the 18 contested
11 signatures and his reasons for disqualifying them. (Opp., Ex. A.) A
12 review of the Defendant's decisions in light of the relevant
13 provisions of the California Elections Code supports Defendant's
14 position that he acted reasonably, not arbitrarily or fraudulently, in
15 finding those signatures invalid. Elections Code section 105 sets
16 forth the general procedure for signature verification:

17 For purposes of verifying signatures on any
18 initiative, referendum, recall, nomination, or
19 other election petition or paper, the elections
20 official shall determine that the residence
21 address on the petition or paper is the same as
22 the residence address on the affidavit of
23 registration. If the addresses are different, or
if the petition or papers does not specify the
residence address, or, in the case of an
initiative or referendum petition, if the
information specified in Section 9020 is not
contained in the petition, the affected signature
shall not be counted as valid.

24 Elections Code section 9115 provides the procedure for signature
25 verification for petitions, including authorizing the use of random
26 sampling of three percent of signatures when the petition includes at
27 least 500 signatures. Elec. Code § 9115(a). If the statistical
28 sampling shows that the number of valid signatures is within 95 to 110

1 percent of the number of signatures of qualified voters needed to
2 declare the petition sufficient, the elections official shall examine
3 and verify each signature filed. Id. § 9115(b). If the petition is
4 found insufficient, no action shall be taken on the petition. Id. §
5 9115(e).

6 Elections Code section 9214 governs what should occur when a
7 ballot measure calls for a special election:

8 If the initiative petition is signed by not less
9 than 15 percent of the voters of the city
10 according to the last report of registration by
11 the county elections official to the Secretary of
12 State pursuant to Section 2187, effective at the
13 time the notice specified in Section 9202 was
14 published . . . and contains a request that the
15 ordinance be submitted immediately to a vote of
16 the people at a special election, the legislative
17 body shall do one of the following:

18 (a) Adopt the ordinance, without alteration, at
19 the regular meeting at which the certification of
20 the petition is presented, or within 10 days after
21 it is presented.

22 (b) Immediately order a special election, to be
23 held pursuant to subdivision (a) of Section 1405,
24 at which the ordinance, without alteration, shall
25 be submitted to a vote of the voters of the city.

26 (c) Order a report pursuant to Section 9212 at the
27 regular meeting at which the certification of the
28 petition is presented. When the report is
presented to the legislative body, the legislative
body shall either adopt the ordinance within 10
days or order an election pursuant to subdivision
(b).

Taken together, these code sections support Defendant's finding
that Plaintiffs' ballot initiative fell short of the number of
signatures required for a special election.

Plaintiffs also contend that the petition achieved the number of
signatures necessary to qualify the initiative for the next regularly
scheduled general election despite its failure to give voters notice

1 of that possibility. (Mem. at 19.) The Court disagrees. First, the
2 cases cited by Plaintiffs regarding courts "jealously" guarding the
3 voters' right to propose legislation are inapposite because they
4 involve petitions that had soundly passed such that the validity of
5 voter signatures was never at issue. See, e.g., Native American
6 Sacred Site v. City of San Juan Capistrano, 120 Cal. App. 4th 961,
7 965-66 (2004) (more than 15 percent of voters signed the initiative
8 petition); Associated Home Builders v. City of Livermore, 18 Cal.3d
9 582, 591 (1986) (voter-enacted municipal land use ordinance was not
10 subject to notice and hearing provisions of zoning law and not
11 unconstitutionally vague).

12 Second, the petition that Plaintiff drafted and circulated to
13 voters stated, "Shall a ballot measure be submitted to the voters of
14 the City of Long Beach at a **special municipal election** that will allow
15 Medical Marijuana Collectives to operate in the City of Long Beach?"
16 FAC, Ex. 1 at 20 (emphasis added). Therefore, the petition clearly
17 states the requirement that it be submitted at a special, as opposed
18 to a general, election. Defendant raised this argument in opposition
19 (Opp. at 11) and Plaintiffs have presented no case law to support
20 their argument that a failure to draft the initiative in the
21 alternative to allow for a general election can be cured by a
22 ministerial act. Indeed, Elections Code section 9215 states that a
23 petition signed by more than 10 percent of the City's registered
24 voters shall be submitted to the voters "unless the ordinance
25 petitioned for is required to be, or for some reason is, submitted to
26 the voters at a special election . . ." Elec. Code § 9215 (emphasis
27 added). Thus, Defendant was eminently reasonable in his refusal to
28 interlineate the petition to transform it into one for consideration

1 at a general election.

2 Finally, Plaintiffs have presented no evidence that Defendant
3 found signatures invalid because of his personal views about the
4 ballot measure. Friends of Bay Meadows v. City of San Mateo, 157 Cal.
5 App. 4th 1175, 1187 (2007) ("The role of the election official is
6 meant to be as impersonal as possible."). Plaintiffs are therefore
7 unlikely to succeed in showing that Defendant acted arbitrarily or
8 fraudulently.

9 Absent any arbitrary or fraudulent conduct, the Court is in no
10 position to second-guess Defendant's reasonable determination that
11 Plaintiffs' initiative failed to meet the number of valid signatures
12 required for a special election.

13 **2. Plaintiffs Are Not Likely to Prevail on Their**
14 **Constitutional Arguments**

15 Due process is implicated where the entire election process,
16 including the state's administrative and judicial corrective process,
17 fails on its face to afford fundamental fairness. Griffin v. Burns,
18 570 F.2d 1065, 1078 (1st Cir. 1978) (holding that a state's
19 retroactive invalidation of absentee and shut-in ballots in primary
20 election presented a due process violation). In Griffin, the First
21 Circuit considered the circumstances under which federal courts
22 intervene in local elections, noting that "[c]ircuit courts have
23 uniformly declined to endorse action under § 1983 with respect to
24 garden variety election irregularities." Id. at 1076. The court
25 explained:

26 The federal court is not equipped nor empowered to
27 supervise the administrative of a local election.
28 If every election irregularity or contested vote
involved a federal violation, the court would be
"thrust into the details of virtually every

1 election, tinkering with the state's election
2 machinery, reviewing petitions, registration
3 cards, vote tallies, and certificates of election
for all manner of error and insufficiency under
state and federal law."

4 Id. at 1077 (citation omitted).

5 Plaintiffs' attempts to cast this case as something more than a
6 "garden variety election irregularit[y]" are not persuasive. First,
7 Plaintiffs claim a conflict exists between Elections Code section 100,
8 which gives all of the City's registered voters the right to sign any
9 proposed ballot measure, and Elections Code section 105, which
10 prohibits the elections official from counting the signature of any
11 voter whose address listed on a proposed ballot measure does not match
12 the address listed in the official voter database. (Reply at 5-6.)
13 Plaintiffs' constitutional challenge regarding voters who moved within
14 the City after signing the petition is a non-starter.

15 In Mapstead v. Anchundo, 63 Cal. App. 4th 246, 265-66 (1998), the
16 California Court of Appeal squarely rejected a similar claim by
17 plaintiffs that even though the residence listed on the petition
18 differed from the signer's registered address, the signature should
19 still be counted because the signer was still within the same voting
20 precinct. The Mapstead plaintiffs attempted to argue that for voters
21 who moved within the precinct, Elections Code section 100 (allowing
22 eligible registered voters to sign a petition) conflicted with section
23 105 (requiring an address match)--the same argument Plaintiffs raise
24 here. Id. at 266. The court found that "[t]he language of section
25 105 is not subject to this reformation." Id. Rather, the statutory
26 language was "clear and controlling" in its mandate that the registrar
27 not count such signatures as valid. Id. The trial court therefore
28 exceeded its authority in compelling the registrar to count the

1 signatures as valid. Id.

2 Moreover, the Mapstead court explained that voters who moved
3 within the same voting precinct were not without a remedy. The
4 Elections Code specifically contemplates that these voters could
5 immediately execute and submit to the registrar a new voter
6 registration affidavit showing the voter's new residence:

7 For purposes of verifying signatures on a recall,
8 initiative, or referendum petition or signatures
9 on a nomination paper or any other election
10 petition or election paper, a properly executed
11 affidavit of registration shall be deemed
12 effective for verification purposes if both (a)
10 the affidavit is signed on the same date or a date
11 prior to the signing of the petition or paper, and
11 (b) the affidavit is received by the county
12 elections official on or before the date on which
the petition or paper is filed.

13 Elec. Code § 2102(b).⁵ Id.

14 Defendant's decision not to count signatures of voters who moved
15 within the district after signing the petition is also consistent with
16 Hartman v. Kenyon, 227 Cal. App. 3d 413 (1991), in which the
17 California Court of Appeal upheld an elections official's
18 disqualification of signatures where the signer's residence address on
19 the petition did not match the residence address on his or her voter
20 registration affidavit: "The Clerk did not err in following the
21 mandate of section 45 [now section 105] and disqualifying the
22 signatures of signors [sic] who listed a different residence address
23 on the petition from the address they listed on their voter
24 registration affidavit." Id. at 423. As such, there is no conflict
25 between Elections Code sections 100 and 105 giving rise to a

26
27 ⁵ Plaintiffs' argument that the vote by mail ballot rules permit
28 votes to be counted if a voter moves after the ballot has been
received by election officials is irrelevant to the procedures for
verifying petition signatures. (Elec. Code 3019; Mem. at 17-18.)

1 constitutional challenge.

2 Second, Plaintiffs' due process claim based on Defendants'
3 failure to place the measure on the April 2014 general election ballot
4 actually cuts the other way. Due process requires notice and, as
5 explained above, signatories to the petition were only on notice that
6 the initiative would be presented in a special election. Thus,
7 Plaintiffs are not likely to prevail on a constitutional argument
8 based on the upcoming April 2014 general election.

9 Finally, Plaintiffs' characterization of this case as implicating
10 First Amendment issues is unconvincing. The free speech cases cited
11 by Plaintiffs are readily distinguishable. See, e.g., Citizens
12 Against Rent Control v. City of Berkeley, 454 U.S. 290, 299 (1981)
13 (holding that contribution limits on committees curtail freedom of
14 speech and impair political dialogue on ballot measures); Meyer v.
15 Grant, 486 U.S. 414, 421-22 (1988) (holding Colorado's prohibition on
16 payments to circulators of petitions violated First Amendment).
17 Plaintiffs' citations to these cases for broad pronouncements on the
18 importance of political free speech do not apply to this case, which
19 has nothing to do with payments to committees or petition circulators.
20 Plaintiffs are unlikely to prevail on free speech or First Amendment
21 grounds, given that Defendant has done nothing more than reasonably
22 carry out his ministerial duties in accordance with the Elections
23 Code.

24 **3. Plaintiffs' Proposed Compromise Would Require Defendant**
25 **to Improperly Revise the Substantive Content of the**
26 **Ballot Initiative**

27 Plaintiffs claim that they proposed a compromise that would allow
28 Defendant a way to avoid violating their constitutional rights. (Mem.

1 at 20-21.) That compromise entailed Plaintiffs "waiv[ing] their
2 potential right to a special election in exchange for something to
3 which they were legally entitled: having Mr. Coltharp's Petition be
4 certified for the City's next regularly scheduled election." (Mem. at
5 21.) Defendant responds that this "compromise" is illusory because
6 the express language of the ballot measure did not request placement
7 of the initiative on the ballot for the next regularly scheduled
8 election. (Opp. at 11-12.)

9 The Court agrees that the proposed ballot measure was not drafted
10 to allow for placement in the general election. It is undisputed that
11 Defendant's role is ministerial. As such, Defendant lacks the
12 authority to unilaterally change the status of an initiative
13 specifying it be voted upon at a special election to one to be voted
14 upon at a general election.

15 Indeed, Plaintiffs' requested relief would likely require
16 Defendant to undertake actions that violate California Election Law.
17 For example, "ordering Defendant Herrera, and all persons acting under
18 his direction and control, to count the signatures of those
19 aforementioned voters" would require Defendant to count the signatures
20 regardless of whether they are valid. (Proposed Order, Request No.
21 2.) Plaintiffs' alternative, which proposes "ordering Defendant
22 Herrera . . . to certify to the Long Beach City Council that the
23 underlying initiative has qualified for the April 8, 2014 City of Long
24 Beach ballot," would effectively nullify the entire verification
25 process. (Proposed Order, Request No. 5.) Plaintiffs' proposed
26 remedies and the facts of this case differ drastically from MHC
27 Financing Limited Partnership Two v. City of Santee, 125 Cal. App. 4th
28 1372, 1381 (2005), a case on which Plaintiffs rely. (Mem. at 20, n.

1 63.) Critically, in MHC Financing, the court permitted a city council
2 to cure its inadvertent enactment of an earlier draft ordinance by
3 enacting the proper ordinance approved by the voters and making it
4 retroactive. Id. at 1381.

5 Because Plaintiffs' "compromise" would require Defendant to go
6 beyond his ministerial role and re-write the initiative, Plaintiffs
7 are unlikely to succeed in obtaining their requested relief.

8 **B. Plaintiffs Have Not Shown that They Will Suffer Irreparable**
9 **Harm**

10 Plaintiffs claim they will suffer irreparable harm because
11 Defendant refuses to certify the petition for any election and "[t]ime
12 is of the essence" due to the requirement that an election be held
13 within 88 to 103 days after it has been ordered. (Elec. Code §
14 1405(a); Mem. at 21.) On its face, this argument fails because the
15 88- or 103-day clock does not begin to run until after the election is
16 ordered.

17 Indeed, any alleged "harm" is not "irreparable" because Election
18 Codes section 9115 expressly states that "the failure to secure
19 sufficient signatures shall not preclude the filing later of an
20 entirely new petition to the same effect." Elec. Code § 9115(e). If
21 the petition contains the requisite number of valid signatures, a
22 special election can be called at any time.: Id. § 9214.

23 With respect to Plaintiffs' concerns about the upcoming April 9,
24 2014 general election, as explained above, the initiative did not call
25 for a general election, and it would be improper to impute that into
26 the petition when no case law or election code section allows for it.
27 As such, Plaintiffs have not shown that they will suffer irreparable
28 harm in the absence of an injunction.

