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December 10, 2013

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Provide additional direction to the City Attorney and the Development Services Department regarding the contents and parameters of a draft ordinance to be presented to the Planning Commission relating to the regulation of Medical Marijuana Dispensaries in Title 21 of the Long Beach Municipal Code (Citywide).

BACKGROUND:

In May 2010, due to the proliferation of illegal, unlicensed storefront dispensaries in the City, the City Council adopted Long Beach Municipal Code ("LBMC") Chapter 5.87 in an effort to regulate medical marijuana collectives in a manner consistent with then current State law. The ordinance set "buffer zones" between collectives and other sensitive land uses, such as residential areas, schools, and parks; and required that collectives be located at least 1,000 feet from one another. The City's ordinance regulated the operation of collectives through a permit system.

In order to obtain a permit from the City under LBMC Chapter 5.87, the City required a collective to comply with certain regulations and "operating conditions." These included record keeping requirements, the installation of sound insulation, odor absorbing ventilation, security cameras, centrally monitored fire and burglar alarm systems, "product" testing by independent laboratories, and a requirement that all marijuana sold in the City also be cultivated within the City limits. Due to the extensive amount of litigation generated by the adoption of LBMC Chapter 5.87, no operational permit was ever issued to any medical marijuana collective, although many continued to operate illegally.

In August 2010, Ryan Pack and Anthony Gayle (collectively "*Pack*") sued the City contending that LBMC Chapter 5.87 was unconstitutional. *Pack* argued that LBMC Chapter 5.87 was preempted by the Federal Controlled Substances Act and the Supremacy Clause of the United States Constitution. Although the City prevailed at the trial court level, the State Court of Appeal reversed the trial court's determination and held that to the extent LBMC Chapter 5.87 permitted and regulated medical marijuana activities, rather than simply decriminalizing certain acts or conduct, it was preempted by federal law.

In direct response to the *Pack v. Long Beach* decision, on February 21, 2012, the City repealed LBMC Chapter 5.87 and instead enacted Chapter 5.89 of the Municipal Code, which effectively acted as a partial ban on "new" medical marijuana outlets and delivery locations in the City. On May 6, 2013, the California Supreme Court unanimously upheld the right of local governments to ban marijuana dispensaries.

CURRENT SITUATION:

On September 10, 2013, the City Council requested the City Attorney and the Development Services Department to prepare a zoning ordinance for consideration by the Planning Commission. Council directed that the ordinance require a Conditional Use Permit (CUP) for new medical marijuana operations in the City. The Council also directed that the following parameters be considered: [1] performance standards which include a security plan; [2] location restrictions within certain zones allowing industrial zones, but excluding residential and institutional zones; [3] a cap of 2 locations per Council District and no more than 18 Citywide; and [4] consideration of "buffers" between dispensaries and schools.

Pursuant to Council's direction, the City Attorney's Office and staff from the Development Services Department have investigated the possibility of limiting dispensaries to two per Council District, while at the same time limiting the location of dispensaries to industrially zoned areas within each Council District. Due to the distribution of industrial land in the City, staff has determined that not all of the Council Districts currently have industrially zoned land that could be designated for medical marijuana uses.

In order to illustrate this issue, the Development Services Department has prepared two maps for Council's consideration. These maps indicate the industrially zoned land in the City and also depict potential "buffer" areas from schools, parks, and day care centers. One map (Exhibit A) illustrates a scenario of a 1,500 foot buffer from existing high schools, a 1,000 foot buffer from existing elementary and middle schools, day care centers and parks (including public beach areas). These buffer area criteria are

similar to those used in LBMC Chapter 5.87's original regulatory scheme. In this scenario, Districts 2, 4 and 6 cannot accommodate dispensaries within these parameters.

For purposes of comparison, the second map (Exhibit B) depicts a "uniform" buffer zone of 600 feet from all sensitive uses such as schools, day care centers, and parks. Six hundred feet was chosen for comparison purposes because California Health and Safety Code section 11362.768 uses this number as a "minimum" distance that collectives/dispensaries should be located from public or private schools providing instruction in kindergarten or grades 1 to 12. In this scenario, Council Districts 2 and 4 are unable to accommodate any dispensaries within these parameters.

Under either the 1000/1500 foot buffer scenario or the 600 foot buffer scenario, it is unlikely that Council Districts 3, 5, 6 or 7 could actually accommodate a medical marijuana use even though there is some industrially zoned land within each of these Districts. Generally, this is because of the location of the industrially zoned land or the current and projected actual use of the land. If Council chooses to impose a 1000 foot buffer between medical marijuana uses in order to prevent clustering, it is likely that that only Districts 1 and 9 (and possibly 7) could accommodate more than one use in a District.

ISSUES TO BE RESOLVED:

Staff is requesting the City Council provide further direction to the City Attorney Office and the Development Services Department regarding the potential location of medical marijuana outlets in the City on the following issues:

Given that not all City Council Districts have industrially zoned land outside of the buffers, does the City Council wish staff to designate other zoning districts (e.g., commercial zones) in those Districts that do not have industrial land available for medical marijuana use; or should those City Council Districts without available industrially zoned land outside of the buffers simply not be designated for medical marijuana uses.

Since not all Council Districts have industrial land available, does City Council still desire that the total number of dispensaries/collectives be set at 18, or should that number be reduced to 2 per District only in those areas that actually have industrial land available.

Staff is also seeking guidance on the appropriate "buffer" to use (e.g., 1,500 feet/1,000 feet vs. 600 feet), and whether City Council is seeking a buffer only from schools and day care centers or from dedicated park and beach areas as well.

Likewise, does City Council desire a buffer (e.g., 1,000 feet) between medical marijuana dispensaries/collectives themselves (such as was contained in LBMC Chapter

5.87) and further does City Council wish to require that marijuana actually be cultivated in the City if it is to be dispensed in the City.

Once direction has been provided by the City Council, the City Attorney's Office and Development Services staff will prepare an item for the Planning Commission's consideration that will reflect the initial input of the City Council.

SUGGESTED ACTION:

Approve recommendation.

CHARLES PARKIN, City Attorney

By
MICHAEL J. MAIS
Assistant City Attorney

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A13-01921
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Attachments: Exhibit A – 1000'/1500' Feet Buffer Map
Exhibit B – 1000'/1500' Feet Buffer Map

City of Long Beach Memorandum
Working Together to Serve

REQUEST TO ADD AGENDA ITEM

Date: December 6, 2013

To: Larry Herrera, City Clerk

From: Charles Parkin, City Attorney

Subject: Request to Add Agenda Item to Council Agenda of December 10, 2013

Pursuant to Municipal Code Section 2.03.070 [B], the City Councilmembers signing below request that the attached agenda item (due in the City Clerk Department by Friday, 12:00 Noon) be placed on the City Council agenda under New Business via the supplemental agenda.

The agenda title/recommendation for this item reads as follows:

> Recommendation to provide additional direction to City Attorney and Development Services Department regarding the contents and parameters of a draft ordinance to be presented to the Planning Commission relating to the regulation of Medical Marijuana Dispensaries in Title 21 of the Long Beach Municipal Code. (Citywide).

Council District	Authorizing Councilmember	Signed by
2	Suja Lowenthal	Suja Lowenthal
6	Dee Andrews	D. Andrews
8	Al Austin	for Al Austin

Attachment: Staff Report dated December 10, 2013

13 DEC -2 AM 11:10

CITY CLERK
RECEIVED

UB-21

December 17, 2013

THESE TWO ITEMS WERE DISTRIBUTED AS PART OF THE DECEMBER 10, 2013 AGENDA PACKET. NO ADDITIONAL COPIES WERE MADE AVAILBLE FOR RE-DISTRIBUTION.

A SCANNED IMAGE OF THIS PORTION
OF THIS AGENDA ITEM IS AVAILABLE IN LEGISTAR
@http://clblegistar.longbeach.gov/calendar/#current

OR

PLEASE CONTACT

THE LONG BEACH CITY CLERK DEPARTMENT AT

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cityclerk@longbeach.gov