



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-23

ROBERT E. SHANNON
City Attorney

HEATHER A. MAHOOD
Chief Assistant City Attorney

MICHAEL J. MAIS
Assistant City Attorney

November 15, 2011

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Anne C. Lattime
Monte H. Machit
J. Charles Parkin

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 5.89 prohibiting the establishment and operation of medical marijuana dispensaries within the City of Long Beach and by repealing Chapter 5.87 relating to medical marijuana collectives, read the first time and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof and declaring that this ordinance shall take effect immediately. (Citywide)

DISCUSSION:

Pursuant to the direction of the City Council at the closed session held on October 11, 2011, attached for your consideration is an ordinance that would repeal the City's existing medical marijuana regulations (Chapter 5.87) and would at the same time enact a ban on medical marijuana collectives and dispensaries citywide (Chapter 5.89).

The attached ordinance is brought as an urgency measure that would go into effect immediately if enacted. The recent Court of Appeal decision in the case of *Pack v. City of Long Beach* has essentially eliminated the City's ability to effectively regulate dispensaries and collectives. Immediate action is required in order to curtail the further proliferation of the uses that the City no longer has the ability to regulate or control.

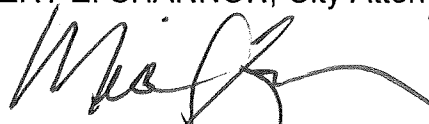
SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By


MICHAEL J. MAIS
Assistant City Attorney

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 5.89 PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF LONG BEACH; AND BY REPEALING CHAPTER 5.87 RELATING TO MEDICAL MARIJUANA COLLECTIVES; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, the people of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 ("CUA") (codified in Health and Safety Code Section 11362.5, *et seq.*), which allows for the possession and cultivation of marijuana for medical use by certain qualified persons; and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited circumstances; and

WHEREAS, in 2004 the State of California enacted Senate Bill 420, the Medical Marijuana Program Act ("MMPA") (codified in California Health and Safety Code Section 11362.7 *et seq.*), which purports to clarify the scope of the CUA, and also which recognizes the right of cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, notwithstanding the passage of the CUA and MMPA, the cultivation, possession, and distribution of marijuana is strictly prohibited by federal law and specifically by the Controlled Substances Act ("CSA") (codified in 21 U.S.C. Section

1 841); and Section 841 of the CSA makes it unlawful for a person to manufacture,
2 distribute, dispense, or possess with intent to manufacture, distribute, or dispense
3 marijuana; and

4 WHEREAS, in accordance with the Long Beach Zoning Code, medical
5 marijuana collectives, dispensaries and cultivation sites are prohibited in all zoning
6 districts Citywide; and

7 WHEREAS, on March 23, 2010, the City Council of the City of Long Beach
8 adopted Ordinance No. ORD -10-0007, (subsequently amended pursuant to Ordinance
9 No. ORD-11-0002), establishing extensive regulations and a permitting process related to
10 the distribution and cultivation of medical marijuana in the City and adding Chapter 5.87
11 ("Medical Marijuana Collectives") to the Long Beach Municipal Code; and

12 WHEREAS, on October 4, 2011, prior to the City issuing any permit to
13 distribute or cultivate medical marijuana, the Second District Court of Appeal for the State
14 of California issued a published opinion in the case of *Pack v. City of Long Beach*, ruling
15 that the permitting and regulating of medical marijuana dispensaries and cultivation sites
16 pursuant to Chapter 5.87 is preempted by the CSA; and

17 WHEREAS, the ruling in *Pack* has profoundly impacted the City's ability to
18 enforce regulatory measures by precluding the City from issuing any permit or imposing
19 any regulation that could be construed as encouraging or authorizing the possession or
20 use of marijuana contrary to federal law. Specifically, the *Pack* decision prohibits the City
21 from issuing operating or construction permits, charging fees to recoup administrative
22 costs, conducting lotteries to determine the location of facilities, imposing product or
23 operational safeguards such as lighting, security, auditing, video recording, inspection or
24 testing, or in any way mandating the geographic distribution of medical marijuana
25 facilities in the City.

26 WHEREAS, before and after the enactment of Chapter 5.87, and despite
27 the City's best efforts to regulate the distribution and cultivation of medical marijuana in a
28 responsible manner, the City has experienced negative secondary effects to public

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ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 health, safety, and welfare, including violence and increased crimes such as falsely
2 obtained identification cards, robberies, burglaries, arson, the sale of illegal drugs to both
3 minors and adults, and murder, all of which can be directly linked to distribution, or
4 cultivation sites established and operating within the boundaries of the City; and

5 WHEREAS, the Long Beach Police Department has incurred substantial
6 investigative, monitoring, and response costs generated by said criminal activity, all of
7 which has placed extensive additional burdens on already scarce law enforcement
8 personnel and resources; and

9 WHEREAS, in addition to the burdens placed on law enforcement due to
10 the existence of dispensaries, the City has also experienced an increase in administrative
11 costs and a drain on resources in various departments and bureaus, all of which are
12 directly related to the City's attempts to implement Chapter 5.87 and regulate the
13 distribution of medical marijuana; and

14 WHEREAS, the City has also experienced negative secondary effects on
15 the community including an increase in pedestrian and vehicular traffic and noise,
16 increased loitering and littering around dispensary and cultivation sites, and increased
17 complaints from residents and businesses regarding the operation of dispensaries in the
18 City, as well as an increase in vacancies in the commercial areas adjacent to cultivation
19 or dispensary sites located in the City; and

20 WHEREAS, pursuant to the City's police powers authorized in Article XI,
21 Section 7 of the California Constitution, the Long Beach Municipal Code, and other
22 provisions of California law, including, but not limited to California Government Code
23 Section 38771, the City has the power through its City Council to declare actions and
24 activities that constitute a public nuisance; and

25 WHEREAS, the City Council wishes to repeal Chapter 5.87 of the Municipal
26 Code ("Medical Marijuana Collectives") and at the same time adopt regulations
27 prohibiting the existence of medical marijuana dispensaries in the City of Long Beach;

28 NOW, THEREFORE, the City Council of the City of Long Beach ordains as

1 follows:

2

3 Section 1. Findings. The City Council finds and determines that the facts
4 set forth in the recitals of this Ordinance are true and correct and hereby incorporates
5 them herein by this reference.

6

7 Section 2. Chapter 5.89 is hereby added to the Long Beach Municipal
8 Code to read as follows:

9

Chapter 5.89

10

MEDICAL MARIJUANA DISPENSARIES

11

12 5.89.010 Purpose and intent.

13 The purpose of this Chapter is to promote the public health, safety
14 and welfare by:

15 A. Prohibiting medical marijuana dispensaries and cultivation
16 sites from locating in the City of Long Beach.

17 B. Protecting citizens from the secondary impacts and effects
18 associated with medical marijuana and related activities, including, but not
19 limited to, loitering, increased pedestrian and vehicular traffic, increased
20 noise, fraud in obtaining or using medical marijuana identification cards,
21 sales of medical marijuana to minors, drug sales, robbery, burglaries,
22 assaults or other violent crimes.

23 C. Decreasing demands on police or other valuable and scarce
24 City administrative, financial, or personnel resources in order to better
25 protect the public fisc.

26 D. This Chapter is not intended to conflict with federal or state
27 law. It is the intention of the City Council that this Chapter be interpreted to
28 be compatible with federal and state enactments and in furtherance of the

1 public purposes which those enactments encompass.

2
3 5.89.020 Definitions.

4 Unless the particular provision or the context otherwise requires, the
5 definitions and provisions contained in this section shall govern the
6 construction, meaning and application of words and phrases used in this
7 Chapter:

8 A. "Cultivation Site" means any facility, establishment, location,
9 or business, indoors or outdoors, that independently or collectively, grows
10 or stores marijuana, in excess of the limitations set forth in Health and
11 Safety Code Section 11362.7 et seq.,

12 B. "Identification Card" shall have the same definition as given
13 such term in California Health and Safety Code Section 11362.7, as may be
14 amended, and which defines "Identification Card" as a document issued by
15 the State Department of Health Services which identifies a person
16 authorized to engage in the medical use of marijuana, and identifies the
17 person's designated primary caregiver, if any.

18 C. "Marijuana" shall have the same definition as given such
19 term in California Health and Safety Code Section 11018, as may be
20 amended, and which defines "Marijuana" as all parts of the plant Cannabis
21 sativa L., whether growing or not; the seeds thereof; the resin extracted
22 from any part of the plant; and every compound, manufacture, salt,
23 derivative, mixture, or preparation of the plant, its seeds or resin. It does not
24 include the mature stalks of the plant, fiber produced from the stalks, oil or
25 cake made from the seeds of the plant, any other compound, manufacture,
26 salt, derivative, mixture, or preparation of the mature stalks (except the resin
27 extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant
28 which is incapable of germination. "Marijuana" includes any of the above

1 parts of the plant, its seeds, or resin, incorporated or infused in foodstuff.

2 D. "Medical Marijuana" means Marijuana authorized in strict
3 compliance and used or cultivated for medical purposes in accordance with
4 California Health and Safety Code Sections 11362.5, or 11362.7, et seq., or
5 any such section as may be amended.

6 E. "Medical Marijuana Dispensary or Dispensary" means any
7 association, business, facility, use, establishment, location, delivery
8 service, cooperative, collective, or provider, whether fixed or mobile, that
9 possesses, cultivates, distributes, or makes available medical marijuana
10 to three or more of the following: a Primary Caregiver, a Qualified Patient,
11 or a patient with an Identification Card.

12 F. "Primary Caregiver" shall have the same definition as given
13 such term in California Health and Safety Code Sections 11362.5 and
14 11362.7 as may be amended, and which define "Primary Caregiver" as an
15 individual, designated by a Qualified Patient or Identification Card holder,
16 who has consistently assumed responsibility for the housing, health, or
17 safety of that Qualified Patient.

18 G. "Qualified Patient" means a person who is entitled to the
19 protections of Health and Safety Code Section 11362.5 for patients who
20 obtain and use marijuana for medical purposes upon the recommendation
21 of an attending physician, whether or not that person applied for and
22 received a valid Identification Card issued pursuant to state law.

23
24 5.89.030 Medical marijuana dispensary prohibited.

25 A. No person or entity shall operate or permit to be operated a
26 Medical Marijuana Dispensary or Cultivation Site in or upon any premise or
27 any zone in the City. The City shall not issue, approve, or grant any permit,
28 license, or other entitlement for the establishment or operation of a Medical

1 Marijuana Dispensary or Cultivation Site.

2 B. It shall be unlawful for any person or entity to own, manage,
3 conduct, establish, operate or facilitate the operation of any Medical
4 Marijuana Dispensary or Cultivation Site, or to participate as an employee,
5 contractor, agent, or volunteer, or in any other manner or capacity, in any
6 Medical Marijuana Dispensary or Cultivation Site in the City. The term
7 “facilitate” shall include, but not be limited to, the leasing, renting or
8 otherwise providing any real property or other facility that will in any manner
9 be used or operated as a Medical Marijuana Dispensary or Cultivation Site
10 in the City.

11
12 5.89.040 Establishment, maintenance, or operation of medical marijuana
13 dispensaries declared a public nuisance.

14 The establishment, maintenance, operation, facilitation, of, or
15 participation in a Medical Marijuana Dispensary or Cultivation Site within the
16 City limits of the City of Long Beach is declared to be a public nuisance, and
17 may be abated by the City or subject to any available legal remedies,
18 including but not limited to civil injunctions and administrative penalties. The
19 City Attorney may institute an action in any court of competent jurisdiction to
20 restrain, enjoin or abate any condition(s) found to be in violation of the
21 provisions of this Chapter, as provided by law. In the event the City files
22 any action to abate any dispensary or cultivation site as a public nuisance,
23 the City shall be entitled to all costs of abatement, costs of investigation,
24 attorney’s fees, and any other relief available in law or in equity.

25
26 5.89.050 Existing medical marijuana dispensary operations.

27 No Medical Marijuana Dispensary, Cultivation Site, Collective,
28 operator, establishment, or provider that existed prior to the enactment of

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this Chapter shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.

5.89.060 Penalties for violation.

A. The violation of any provision of this Chapter is unlawful and constitutes a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or a jail term of six (6) months, or both. Each and every day a violation occurs shall be deemed a separate violation.

B. In addition to the remedies set forth herein, the City in its sole discretion, may also issue an Administrative Citation in accordance with Chapter 9.65 of this Code to any person or entity that violates the provisions of this Chapter.

5.89.070 Severability.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.

Section 3. Chapter 5.87 of the Long Beach Municipal Code is hereby repealed.

Section 4. The City Council finds that this Ordinance is not subject to environmental review under the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations (CEQA Guidelines) Section 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section

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ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 15378) because it has no potential for resulting in physical change to the environment,
2 directly or indirectly.

3
4 Section 5. Declaration of Urgency. This Ordinance is an emergency
5 measure, and is urgently required for the reason that the City's existing medical
6 marijuana regulatory process as set forth in Chapter 5.87 of the Code has recently been
7 declared by the Second District Court of Appeal for the State of California to be in conflict
8 with, and preempted by Federal law. Failing to adopt this Ordinance as an urgency
9 measure will place the City of Long Beach in a situation where it has no regulatory control
10 over medical marijuana dispensaries, which situation would likely lead to an exacerbation
11 of the negative secondary effects that such facilities have caused, and continue to cause
12 in the City, which effects are more fully described elsewhere herein.

13
14 Section 6. This Ordinance is an emergency ordinance duly adopted by
15 the City Council by a vote of five of its members and shall take effect immediately. The
16 City Clerk shall certify to a separate roll call and vote on the question of the emergency of
17 this ordinance and to its passage by the vote of five members of the City Council of the
18 City of Long Beach, and cause the same to be posted in three conspicuous places in the
19 City of Long Beach.

20
21 I hereby certify that on a separate roll call and vote which was taken by the
22 City Council of the City of Long Beach upon the questions of the emergency of this
23 ordinance at its meeting of _____, 2011, the ordinance was
24 declared to be an emergency by the following vote:

25 ///

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28 ///

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Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

I further certify that thereafter, at the same meeting, upon a roll call and vote on adoption of the ordinance, it was adopted by the City Council of the City of Long Beach by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

I further certify that the foregoing ordinance was thereafter adopted on final reading of the City Council of the City of Long Beach at its meeting of _____, 2011, by the following vote:

Ayes: Councilmembers: _____

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Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor