

ORDINANCE NO. ORD-12-0004

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2
3 AN ORDINANCE OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AMENDING THE LONG BEACH
5 MUNICIPAL CODE BY ADDING CHAPTER 5.89
6 PROHIBITING THE ESTABLISHMENT AND OPERATION
7 OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE
8 CITY OF LONG BEACH; AND BY REPEALING CHAPTER
9 5.87 RELATING TO MEDICAL MARIJUANA
10 COLLECTIVES; DECLARING THE URGENCY THEREOF;
11 AND DECLARING THAT THIS ORDINANCE SHALL TAKE
12 EFFECT IMMEDIATELY
13

14 WHEREAS, the people of the State of California have enacted Proposition
15 215, the Compassionate Use Act of 1996 ("CUA") (codified in Health and Safety Code
16 Section 11362.5, *et seq.*), which allows for the possession and cultivation of marijuana for
17 medical use by certain qualified persons; and

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

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

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

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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

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;

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1 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
2 follows:

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

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

10 Chapter 5.89

11 MEDICAL MARIJUANA DISPENSARIES

12
13 5.89.010 Purpose and intent.

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

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

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

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

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

1 be compatible with federal and state enactments and in furtherance of the
2 public purposes which those enactments encompass.

3
4 5.89.020 Definitions.

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

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

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

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

1 which is incapable of germination. "Marijuana" includes any of the above
2 parts of the plant, its seeds, or resin, incorporated or infused in foodstuff.

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

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

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

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

24
25 5.89.030 Medical marijuana dispensary prohibited.

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

1 license, or other entitlement for the establishment or operation of a Medical
2 Marijuana Dispensary or Cultivation Site.

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

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

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

26
27 5.89.050 Existing medical marijuana dispensary operations.

28 No Medical Marijuana Dispensary, Cultivation Site, Collective,

1 operator, establishment, or provider that existed prior to the enactment of
2 this Chapter shall be deemed to be a legally established use or a legal non-
3 conforming use under the provisions of this Chapter or the Code.

4
5 5.89.055 Temporary Exemption.

6 Unless otherwise extended by the City Council, the provisions of this
7 Chapter, which prohibit and ban dispensary and cultivation sites in the City
8 shall not be applicable until August 12, 2012, to those applicants of certain
9 dispensaries or cultivation sites that were successful participants in a lottery
10 conducted by the City on September 20, 2010. This temporary exemption is
11 enacted in recognition of the fact that even though no permits have been
12 issued, said applicants may have expended funds in good faith to facilitate
13 their operations in accordance with the provisions of Chapter 5.87 of the
14 Municipal Code at the time it was in existence and before the decision in
15 Pack v. City of Long Beach was issued by the California Court of Appeal. A
16 complete list of those applicants eligible for a temporary exemption pursuant
17 to the terms of this Section is attached hereto and incorporated herein by
18 this reference. Said list shall exist as an uncodified provision of this
19 Chapter.

20 The temporary exemption established pursuant to this Section shall
21 not be construed to protect applicants, dispensary or cultivation site owners,
22 permittees, operators, and employees or their members from state or
23 federal laws that may prohibit cultivation, sale, use, or possession of
24 controlled substances. Moreover, cultivation, sale, possession, distribution,
25 and use of marijuana remain violations under federal law as of the date of
26 the adoption of this Chapter, and this Section is not intended to, nor does it,
27 protect any of the above described persons or entities from arrest or
28 prosecution under those federal laws.

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

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

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

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I hereby certify that on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the questions of the emergency of this ordinance at its meeting of February 14, 2012, the ordinance was declared to be an emergency by the following vote:

Ayes: Councilmembers: Garcia, Lowenthal, DeLong, O'Donnell,
Schipske, Andrews, Johnson, Gabelich,
Neal.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

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: Garcia, Lowenthal, DeLong, O'Donnell,
Schipske, Andrews, Johnson, Neal.

Noes: Councilmembers: Gabelich.

Absent: Councilmembers: None.

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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 _____, 2012, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT
BUSINESS RELATIONS BUREAU

MEDICAL MARIJUANA COLLECTIVE PERMIT ELIGIBLE APPLICANTS

<u>Lottery</u>	<u>Name</u>	<u>Address</u>
a30rbf	4th Street Collective Inc	1069 E Wardlow Rd
qgxc2n	Avalon Wellness Collective	1302 Gaylord St
hty6vx	The Airport Collective *Collective*	1424 E Broadway
n6hxuc	Chronic Pain Releaf Center	1501 Santa Fe Ave
o16l2j	CLB Collective	1667 W 9th St
hty6vx	The Airport Collective *Cultivation*	1725 Seabright Ave
36kb79	LB Collective Inc	1731 E Artesia Blvd
zkkqe6	Long Beach Green Room	1735 E 7th St
91qm21	Cornerstone Health & Wellness	1838 E Wardlow Rd
4rincu	Emerald Beach Care	1932 E Anaheim St
fcc16e	Earheart of Long Beach	1940 E Del Amo Blvd
jsjys4	562 Discount Med Inc	2025 E 10th St
5oqyja	RLB Collective	2119 Curry St
3jsqvs	Natural Herbal Solutions	2130 Cowles St
zdfn8h	NLB collective	2335 Long Beach Blvd
7v1iwd	Calm Collective Wellness Center	2515 E Anaheim St
xki41a	1 Love Beach Cooperative	2767 E Broadway
d6t8qk	CARE Alternative Meds	3009 South St
c3oivw	Alternate Health Collective Association	3428 Long Beach Blvd
50hjnt	Belmont Shore Natural Care *Collective*	5375 2nd St
ntfpm	Cannabis Evaluation Center	5595 E 7th St
ahh68m	Alternative Therapeutic solution	5707 Atlantic ave
50hjnt	Belmont Shore Natural Care *Cultivation*	6635 Samia Ave
dnogde	Holistic Alternative Herbal Medicine	6978 Stanley Ave