



City of Long Beach
Working Together to Serve

Memorandum

Office of the City Attorney

DATE: February 22, 2012
To: Larry Herrera, City Clerk
FROM: Michael J. Mais, Assistant City Attorney *MJM*
SUBJECT: Medical Marijuana Ordinance
Revised at City Council meeting on February 21, 2012

Transmitted herewith is the subject ordinance revised after changes were made on the floor on February 21, 2012, and which was adopted by the City Council on second reading.

If you have any questions, please do not hesitate to contact me at extension 82230.

MJM:kjm

Attach.

A11-02640
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OFFICE OF THE CITY ATTORNEY
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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

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

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

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

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public purposes which those enactments encompass.

5.89.020 Definitions.

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

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

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

C. "Marijuana" shall have the same definition as given such term in California Health and Safety Code Section 11018, as may be amended, and which defines "Marijuana" as all parts of the plant Cannabis sativa L., whether growing or not; 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. "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 service,
8 cooperative, collective, or provider, whether fixed or mobile, that possesses,
9 cultivates, distributes, or makes available medical marijuana to any person,
10 including: a Primary Caregiver, a Qualified Patient, or a patient with an
11 Identification Card. The term "Medical Marijuana Dispensary" does not
12 include three (3) or fewer qualified patients or their primary caregivers who
13 associate at a particular location or property in the City to collectively or
14 cooperatively cultivate or distribute medical marijuana amongst themselves
15 in accordance with all applicable provisions of state law.

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

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

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5.89.030 Medical marijuana dispensary prohibited.

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

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

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

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

1 attorney's fees, and any other relief available in law or in equity.

2
3 5.89.050 Existing medical marijuana dispensary operations.

4 No Medical Marijuana Dispensary, Cultivation Site, Collective,
5 operator, establishment, or provider that existed prior to the enactment of
6 this Chapter shall be deemed to be a legally established use or a legal non-
7 conforming use under the provisions of this Chapter or the Code.

8
9 5.89.055 Temporary Exemption.

10 Unless otherwise extended by the City Council, the provisions of this
11 Chapter, which prohibit and ban dispensary and cultivation sites in the City
12 shall not be applicable until August 12, 2012, to those applicants of certain
13 dispensaries or cultivation sites that were successful participants in a lottery
14 conducted by the City on September 20, 2010, and were not otherwise
15 excluded by the amendment adopted pursuant to ORD-11-0013, which
16 amended the definition of "park" or "public park" in former Chapter 5.87 of
17 this Code. This temporary exemption is enacted in recognition of the fact
18 that even though no permits have been issued, said applicants may have
19 expended funds in good faith to facilitate their operations in accordance with
20 the provisions of Chapter 5.87 of the Municipal Code at the time it was in
21 existence and before the decision in Pack v. City of Long Beach was issued
22 by the California Court of Appeal. A complete list of those applicants
23 eligible for a temporary exemption pursuant to the terms of this Section is
24 attached hereto and incorporated herein by this reference. Said list shall
25 exist as an uncodified provision of this Chapter.

26 The temporary exemption established pursuant to this Section shall
27 not be construed to protect applicants, dispensary or cultivation site owners,
28 permittees, operators, and employees or their members from state or

1 federal laws that may prohibit cultivation, sale, use, or possession of
2 controlled substances. Moreover, cultivation, sale, possession, distribution,
3 and use of marijuana remain violations under federal law as of the date of
4 the adoption of this Chapter, and this Section is not intended to, nor does it,
5 protect any of the above described persons or entities from arrest or
6 prosecution under those federal laws.

7
8 5.89.060 Penalties for violation.

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

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

17
18 5.89.070 Severability.

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

24
25 Section 3. Chapter 5.87 of the Long Beach Municipal Code is hereby
26 repealed.

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1 Section 4. The City Council finds that this Ordinance is not subject to
2 environmental review under the California Environmental Quality Act pursuant to Title 14
3 of the California Code of Regulations (CEQA Guidelines) Section 15060 (c)(2) (the
4 activity will not result in a direct or reasonably foreseeable indirect physical change in the
5 environment) and Section 15060(c)(3) (the activity is not a project as defined in Section
6 15378) because it has no potential for resulting in physical change to the environment,
7 directly or indirectly.

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

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

23 I hereby certify that on a separate roll call and vote which was taken by the
24 City Council of the City of Long Beach upon the questions of the emergency of this
25 ordinance at its meeting of _____, 2012, the ordinance was

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declared to be an emergency by the following vote:

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: _____

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1 I further certify that the foregoing ordinance was thereafter adopted on final
2 reading of the City Council of the City of Long Beach at its meeting of _____,
3 2012, by the following vote:

4
5 Ayes: Councilmembers: _____

6 _____

7 _____

8 _____

9 Noes: Councilmembers: _____

10 _____

11 Absent: Councilmembers: _____

12 _____

13 _____

14 _____

15 _____
City Clerk

16 _____

17 Approved: _____
Mayor

18 (Date)

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

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