



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

R-23

333 West Ocean Blvd • Long Beach, California 90802

June 19, 2012

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive and file a report reviewing the status of Ordinance No. ORD-12-0004 (Chapter 5.89) of the Long Beach Municipal Code (LBMC), as enacted by the City Council on February 14, 2012, the operations and activities of the medical marijuana collectives that were provided a six-month exemption, and enforcement against non-exempted marijuana collectives and cultivations sites within the City of Long Beach. (Citywide)

DISCUSSION

On February 14, 2012, the City Council approved a recommendation to declare Emergency Ordinance No. ORD-12-0004 (Chapter 5.89), immediately prohibiting marijuana dispensary and cultivation sites in the City of Long Beach, and providing a temporary exemption from Ordinance prohibitions for 180 days for those collectives/dispensary applicants that were successful participants in the September 20, 2010, permit lottery, provided that such collectives/dispensaries were actually operating as of February 14, 2012; and directed the City Manager to provide, within 120 days, a report reviewing the status of the ordinance, the operations and activities of exempted collectives, and enforcement actions against non-exempted collectives and cultivation sites.

As highlighted in the May 18, 2012 memo provided to the Mayor and City Council (attached), a significant amount of City resources, including the Long Beach Police Department (LBPD), City Attorney's Office, Department of Financial Management and the City Prosecutor's Office, have been devoted to enforcing the prohibition enacted by the City Council. The process of enforcement has been long and arduous and, still today, a number of illegal collectives continue to operate. While LBPD continues with ongoing investigations, other City resources pursue the property owners through administrative fees, property liens, revocation of commercial property business licenses, as well as criminal misdemeanors and civil lawsuits against the collective operators.

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In addition, the City has seen a number of the temporarily exempted collectives operating outside of the parameters originally enacted by the City Council. Examples include changes in ownership, the distribution of concentrates, the dispensing of edibles not produced on site, the acquisition of medical marijuana via a third party versus onsite cultivation, and creation of nuisances to the surrounding businesses and residences.

This matter was reviewed by Deputy City Attorney Michael Mais on June 6, 2012 and Budget and Performance Management Bureau Manager Dennis Strachota on June 5, 2012.

TIMING CONSIDERATIONS

City Council action is requested on June 19, 2012, as the City Council requested a report within 120 days from the February 14, 2012 City Council meeting. The six-month temporary exemption from the Ordinance prohibitions that was provided to those collectives/dispensary applicants that were successful participants in the September 20, 2010 permit lottery, operating as of February 14, 2012, expires August 14, 2012, at which time Chapter 5.89 of the LBMC will go into full effect Citywide.

FISCAL IMPACT

While the fiscal impact has not been formally quantified, a significant amount of City resources have been and continue to be allocated to the enforcement of LBMC 5.89.

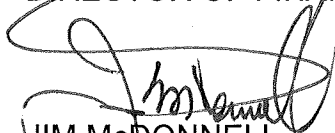
SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT



JIM McDONNELL
CHIEF OF POLICE



ROBERT E. SHANNON
CITY ATTORNEY

APPROVED:



PATRICK H. WEST
CITY MANAGER



Date: May 18, 2012
To: Mayor and Members of the City Council
From: Patrick H. West, City Manager
Subject: Marijuana Dispensary Enforcement

Background

On February 14, 2012, the City Council repealed Chapter 5.87 of the Municipal Code in direct response to the Court of Appeal decision in Pack v. City of Long Beach. Before it was repealed, Chapter 5.87 contained the City's medical marijuana collective and cultivation regulations. At the same meeting, the City Council adopted a partial ban on medical marijuana facilities citywide, enacting Chapter 5.89 of the Municipal Code. However, the City Council also enacted a six-month exemption from the ban for those marijuana facilities that had successfully participated in the City's medical marijuana lottery process held in September 2010. The City Council further directed staff to report back in 120 days on the status of medical marijuana activities in the City.

Enforcement Activities

The sale of marijuana for profit is against both federal and state law. While the Police Department has attempted to implement the City Council's direction on medical marijuana dispensaries, the District Attorney has indicated they will not file felony drug charges against any dispensary operator in the City as long as the partial exemption from the ban exists. This has effectively eliminated the Police Department's ability to seek felony criminal filings with the District Attorney for the sale or distribution of marijuana against anyone operating a dispensary in Long Beach. Therefore, the Police Department does not have an effective criminal enforcement tool to prevent dispensaries from operating per the City Council's direction.

The ordinance banning medical marijuana collectives (Chapter 5.89) is currently the only local authority the Police Department and City are able to utilize for enforcement against "new" dispensary operators. A violation of Chapter 5.89 is a misdemeanor and, with the City Prosecutor's assistance, cases are being filed by the Police Department against illegal operators. Thus far, the City's experience in using this misdemeanor avenue has proven to be ineffective in the control and elimination of illegal dispensaries. The small fines that have resulted from enforcement efforts have not restricted their ability to operate and, thus far, have been regarded as a minor cost of doing business. Some dispensaries that have been closed down by the Long Beach Police Department have re-opened the following day. It is also important to note that, through site visits and discussions with collective operators, a number of the collectives that had successfully participated in the City's medical marijuana lottery process have changed management.

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It appears that the management members, who applied in June 2010 and went through the City's intensive screening process, are not necessarily the same individuals currently operating today.

Other Enforcement Actions

There are other resources within City departments that are being engaged in an effort to address this problem. The Department of Financial Management, with the assistance of the City Attorney, is pursuing property owners with administrative citations, which can be upwards of \$500 a day. If these citations go unpaid and non-compliance continues, the fines associated with these citations may result in a lien against the property. In addition, the Department of Financial Management has begun to revoke the property owners' Commercial Business License, in accordance with the LBMC. Once the revocation has concluded, the property owner can be cited daily with a misdemeanor fine of \$1,500 and cannot re-apply for a Commercial Business License for one year. It is a tedious and lengthy administrative process, but the possibility of incurring steep fines, property liens and the loss of their Commercial Business License is an incentive for property owners to evict these illegal dispensaries. While these administrative actions may be appropriate, they have yet to provide the results we had hoped for, which is immediate closure of all illegal dispensaries. Further legal action could delay these actions.

In addition, the City Attorney's Office is preparing several civil actions that will be filed against illegal dispensary operators. These civil cases will be asking for a court to issue an injunction to prohibit all illegal operations. It is expected that these actions will be vigorously opposed and, therefore, will not provide a "quick fix" to the problem of medical marijuana dispensary proliferation.

Conclusion

While the City will continue to pursue civil actions, administrative citations, misdemeanor criminal fines and business license revocation, given the fiscal constraints and manpower challenges that the City is facing, it is an inefficient use of very limited resources to continue to pursue such expensive law enforcement action when there is no real hope of felony criminal prosecution. There is significant evidence that there are violent acts and property crimes associated with many of these establishments, which has an effect on the communities that surround them. Unfortunately, the City of Long Beach is in a position where our ability to pursue law enforcement action will be limited to those few cases where the Police Department can establish enough evidence to obtain misdemeanor criminal filings, until the City Council enacts a total ban on marijuana dispensaries.

cc: Bob Shannon, City Attorney
Doug Haubert, City Prosecutor
Suzanne Frick, Assistant City Manager
Reginald Harrison, Deputy City Manager
Jim McDonnell, Police Chief
John Gross, Director of Financial Management
Jyl Marden, Assistant to the City Manager