

**Exhibit B**

**December 10, 2013**

**City Council agenda item (carried over to December 17, 2013)  
and minutes from December 17, 2013**



## OFFICE OF THE CITY ATTORNEY

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~~NB-25~~

**UB-21**

Christina L. Checel

### DEPUTIES

C. Geoffrey Allred  
Gary J. Anderson  
Richard Anthony  
Kendra L. Carney  
LaTasha N. Corry  
Charles M. Gale  
Michele L. Levinson  
Barbara J. McTigue  
Barry M. Meyers  
Howard D. Russell  
Tiffani L. Shin  
Linda T. Vu  
Amy R. Webber  
Theodore B. Zinger

**CHARLES PARKIN**  
City Attorney

**MICHAEL J. MAIS**  
Assistant City Attorney

**MONTE H. MACHIT**  
Assistant City Attorney

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.

13 DEC -8 PM 11:10

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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

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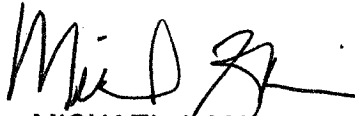
5.87) and further does City Council wish to require that marijuana actually be cultivated in the City if it is to be dispensed in the City.

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

MJM:KLC:jp:kjm

A13-01921

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

**A motion was made to approve recommendation on the Consent Calendar.**

5. 13-1112

WITHDRAWN

~~Recommendation to adopt resolution approving the Proposed Fiscal Year 2013-2014 Harbor Department Salary Resolution No. HD-2746.~~

**This Resolution was withdrawn.**

6. 13-1117

Recommendation to adopt resolution which amends the resolution approving the compensation fixed by the Board of Water Commissioners of the City for officers and employees in the Water Department.

**A motion was made to approve recommendation and adopt Resolution No. RES-13-0123 on the Consent Calendar.**

**Enactment No: RES-13-0123**

7. 13-1106

Recommendation to receive and file minutes for:  
Civil Service Commission - November 20, 2013.

**A motion was made to approve recommendation on the Consent Calendar.**

**UNFINISHED BUSINESS (6:23 PM)**

21. 13-1099

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)

Michael Mais, Assistant City Attorney, spoke.

Amy Bodek, Director of Development Services, spoke.

Michael Mais, Assistant City Attorney, spoke.

Jim McDonnell, Chief of Police, spoke.

Councilwoman Schipske spoke.

Councilmember O'Donnell spoke.

Councilmember Neal spoke.

Vice Mayor Garcia spoke.

Councilmember Lowenthal spoke.

Councilman Austin spoke.

Councilwoman Schipske spoke.

Councilman Austin spoke.

Councilwoman Schipske spoke.

Councilmember Neal spoke.

Councilmember Johnson spoke.

Councilmember Lowenthal spoke.

Vice Mayor Garcia spoke.

David Zink spoke.

Madeline Johnson spoke.

Dr. Ben Orizaba spoke.

Diana Lejins spoke.

Nobe Serrand spoke.

Adam Ajasee spoke.

Floyd Bocox spoke; and distributed correspondence.

Jason Aula spoke.

Gina Nam, Long Beach Collective Association, spoke.

Joe Baca spoke.

KG spoke.

Councilmember Lowenthal spoke.

Councilmember DeLong spoke.

Councilmember Lowenthal spoke.

Councilmember O'Donnell spoke.

Councilman Austin spoke.

Councilmember Lowenthal spoke.

Councilmember DeLong spoke.

Vice Mayor Garcia spoke.

A motion was made by Councilmember Lowenthal, seconded by Councilmember Neal, to receive and file the staff report and forward to the Planning Commission with direction to address the following parameters: [1] performance standards which include a security plan; [2] allowing dispensaries to be only located within industrial zones; [3] a cap of two (2) locations per Council District and no more than 18 Citywide; [4] consideration of 1,000 and 1,500 "buffers" between dispensaries, schools, and parks; [5] development of CUP criteria, process and fees; [6] creation of an advisory task force; [7] development of a mechanism accommodation of previously vetted marijuana dispensaries; and [8] report back to the City Council within 60 days from completion of the Planning Commission's study and recommendations on a zoning ordinance addressing medical marijuana dispensaries. The motion carried by the following vote:

Yes: 9 - Garcia, Lowenthal, DeLong, O'Donnell, Schipske, Andrews, Johnson, Austin and Neal

REGULAR AGENDA (5:44 PM)