



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

H-3

333 West Ocean Blvd • Long Beach, California 90802

October 23, 2012

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the hearing officer's recommendation to revoke business license number BU93014571 issued to Bentech, LLC, located at 3721 E. Anaheim Street.
(District 4)

DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever a revocation of a business license is appealed.

On July 10, 2012, the City Council referred the appeal of the business license revocation for Bentech, LLC, to a hearing officer and the revocation hearing was held on September 12, 2012. When the City Council appoints a hearing officer to conduct the appeal proceedings, the LBMC also requires the City Council to review and consider the hearing officer's written report. The City Council may adopt, reject or modify the recommended decision. In its discretion, the City Council may take additional evidence at the hearing or refer the case back to the hearing officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer Joel T. Glassman's October 5, 2012 written report (Attachment A). Hearing Officer Glassman recommends that the business license (BU93014571) issued to Bentech, LLC, located at 3721 E Anaheim Street, for commercial/industrial space rental be revoked.

In addition, below is a chronological order of events leading up to the hearing officer's decision:

- On May 16, 2012, a business license revocation hearing was conducted, in compliance with LBMC Section 3.80.429.1. On May 30, 2012, the hearing officer recommended to the Director of Financial Management to revoke business license number BU93014571 (Attachment B).

HONORABLE MAYOR AND CITY COUNCIL

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- On June 6, 2012, the Department of Financial Management revoked the business license issued to Bentech, LLC, located at 3721 E. Anaheim Street, Long Beach, CA 90804 (Attachment C), due to violations of the Long Beach Municipal Code (LBMC) and state law.
- The licensee lodged its written request for appeal on June 14, 2012 (Attachment D). Pursuant to LBMC Section 3.80.429.5, a licensee can appeal the revocation of a business license to the City Council. Whenever it is provided that a hearing shall be heard by the City Council, the City Council may, in its discretion, conduct the hearing itself or refer it to a hearing officer, in accordance with LBMC 2.93.050(A).
- On July 10, 2012, the City Council referred the appeal of the business license revocation for Bentech, LLC, to a hearing officer.
- On September 12, 2012, the revocation appeal hearing was held. The hearing officer that was assigned by the City Clerk's Office to hear the matter was Joel T. Glassman, Esq.
- On October 5, 2012, the hearing officer recommended that the business license issued to Bentech, LLC, should be revoked due to violations of LBMC Section 3.80.429.1.

LBMC Section 2.93.050 requires that the City Council set a time for a hearing to review and consider the hearing officer's report and recommendation. After review of the hearing officer's report, the City Council may adopt, reject or modify the recommended decision.

This matter was reviewed by Deputy City Attorney Kendra Carney on October 8, 2012.

TIMING CONSIDERATIONS

The hearing date of October 23, 2012, has been posted on the business location, and the property owner has been notified by mail.

FISCAL IMPACT

There is no fiscal or local job impact associated with this recommendation.

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SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

ES:smc
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ATTACHMENTS

APPROVED:



PATRICK H. WEST
CITY MANAGER

LAW OFFICES OF JOEL T. GLASSMAN

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October 5, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 W. Ocean Blvd.
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Appeal Hearing Officer; Administrative Citation No. BU93014571; Matter of Bentech and City of Long Beach Appeal of Revocation of Business License Number BU93014571 issued to Bentech LLC

Dear Mr. Herrera:

On September 12, 2012, I conducted a hearing on appeal of the administrative officer's recommendation as contained in his May 30, 2012 Report and Recommendation of Hearing Officer ("Ramsey Recommendation") that the City of Long Beach Business License Number BU93014571 issued to Bentech LLC ("Bentech"), be revoked.

For the reasons stated in my September 20, 2012, letter I recommend that the Ramsey Recommendation be reversed.

Subsequent to that time, I granted City of Long Beach's request by and through its city attorney, Kendra Carney, to reconsider my recommendation due in part to a material change in the controlling legal authority. I agreed to consider a further review of my decision and received at my direction letter briefs from the City of Long Beach and from Bentech LLC by and through its counsel, James Devine.

My review is completed and my recommendation as contained in this letter is to reverse my earlier recommendation. I therefore recommend denial of Bentech's appeal of the revocation of Bentech's business license number BU93014571.

My current recommendation is primarily predicated on the California Supreme Court's grant of review of the Cannabis Collective case upon which I heavily relied in my now superseded September 20th recommendation. Just days after the September 20th

recommendation was completed, it came to my attention that Cannabis was no longer good law. No matter how persuasive the logic may be as argued by Bentech, there are similarly other cases that are no longer good law that are up for review that logically would seem to support the City of Long Beach's position that the Bentech license be revoked, such as Pack v. Superior Court.

Once again, I want to emphasize and reiterate, that the law in this area is fluid and may change once a definitive opinion is reached, particularly in the California Supreme Court. Therefore, the undersigned further recommends that Bentech in the future should have the right to another administrative hearing to contest the revocation of the subject business license if and when the California Supreme Court, in particular, or another court of competent jurisdiction, makes a definitive ruling that supports Bentech's position.

Accordingly, it is recommended by the undersigned that the September 20, 2012 recommendation be and hereby is superseded by this recommendation, i.e., to affirm the May 30, 2012 recommendation of hearing officer, Thomas A. Ramsey, and that business license number BU93014571 issued to Bentech LLC, be revoked.

Respectfully submitted,

Joel T. Glassman



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

J. CHARLES PARKIN
Assistant City Attorney

October 3, 2012

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VIA U.S. MAIL & EMAIL

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Los Angeles, CA 90025

RE: **Matter of Bentech, LLC - Recommendation of Appeal Hearing
Officer in the Matter of Business License No. BU93014571**
Our File No.: A12-01177

Dear Mr. Glassman:

Thank you for the opportunity to provide a reply to Appellant Bentech, LLC. As Appellant readily admits, the Supreme Court granted the County of Los Angeles Petition for Review, and thereby depublished *County of Los Angeles v. Alternative Medical Cannabis Collective* (2012) 207 Cal.App.4th 601 ("AMCC") in accordance with California Rule of Court 8.1005(e). Despite the fact that AMCC is no longer citable case law, Appellant incorrectly urges the hearing officer to reinstate the LLC's business license based on the ruling in AMCC.

Yet, even if the ruling in AMCC could be relied upon, in that case the County of Los Angeles enforced a complete ban on all collective medical marijuana operations in its jurisdiction. This is simply not the case in the City of Long Beach. Long Beach Municipal Code Chapter 5.89, as provided in the City's evidence packet under Tab 6, states in no uncertain terms:

"The term "Medical Marijuana Dispensary" does not include three (3) or fewer qualified patients or their primary caregivers who associate at a particular location or property in the City to collectively or cooperatively cultivate or distribute medical marijuana amongst themselves in accordance with all applicable provisions of state law." (LBMC 5.89.020(e)).

Moreover, in *Savia, Inc. et al. v. City of Long Beach*, case number BC489728, in Department 82 of the Los Angeles Superior Court, Judge Lavin ruled that allowing collectives of three or fewer to operate in the City complied with the objectives of state law. In doing so the Judge stated:

"While cultivation by three or fewer qualified patients may not be ideal and will impose certain hardships, it obviously does not constitute a total ban on medical marijuana. Qualified patients

Joel T. Glassman, Esq.
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and primary caregivers may still cultivate marijuana for approved medical purposes, and may still do so in collectives-even if these collectives are not optimally suited to wide distribution of medical marijuana."

A true and correct copy of the ruling is attached hereto as Exhibit A.

As the City stated during earlier proceedings, in the wake of the ruling in *Ryan Pack et al. v. City of Long Beach*, (2011) 199 Cal.App.4th 1070, the City of Long Beach is in a position truly unique from other municipalities in the State. The Court of Appeals in *Pack* held that the City is unable to affirmatively permit any aspect of a medical marijuana dispensary as such activity is preempted by federal law. As a result the City passed LBMC Chapter 5.89 creating a ban on dispensaries of four (4) or more members in the City. The City's current ordinance regulating medical marijuana dispensaries and collectives (Chapter 5.89) is a legislative reaction to the demise of the previous ordinance as a result of the Court of Appeal's opinion. The City does not affirmatively permit any collectives, and cannot do so in any way in accordance with *Pack*. Instead, the City clearly exempts micro-collectives of three or fewer to operate in harmony with the terms of the CUA and MMPA.

For the reasons provided above, the City respectfully requests you reconsider and revise your recommendation to deny Appellant's appeal of business license number BU93014571.

Best regards,

Very truly yours,

ROBERT E. SHANNON, City Attorney

By: 
KENDRA L. CARNEY
Deputy City Attorney

KLC:jp

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ecc: Thomas Ramsey, Hearing Officer
James Devine, Attorney for Bentech, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ORIGINAL FILED
DEPARTMENT 82

FOR THE COUNTY OF LOS ANGELES

AUG 30 2012

LOS ANGELES
SUPERIOR COURT

Savia, Inc., and Daniel Davis,)	
Plaintiffs,)	Case No. BC489728
v.)	
City of Long Beach,)	Order Discharging OSC
Defendant.)	and Denying
)	Preliminary Injunction

Plaintiffs Savia, Inc. ("Savia") and Daniel Davis ("Davis") filed their declaratory relief action against the City of Long Beach ("Defendant" or "City") on August 6, 2012. Savia is medical marijuana collective or dispensary located at 1940 E. Del Amo Boulevard in Long Beach. Davis is Savia's Director and Secretary and a medical marijuana patient. Plaintiffs allege that Savia operated under the City's old ordinance concerning medical marijuana (Chapter 5.87). However, under the City's new ordinance (Chapter 5.89), Savia was required to close its operations by August 12, 2012 or risk fines and criminal penalties. Chapter 5.89 was passed on February 14, 2012 and repealed Chapter 5.87. On August 9, 2012, the Court issued a temporary restraining order and order to show cause which enjoined the City from enforcing Chapter 5.89 against Plaintiffs. The matter was argued and submitted on August 30, 2012.

Analysis

The production and sale of marijuana in California, including the production and sale for medical purposes, is regulated by federal law, state law, and local government ordinances. Federal law (the Controlled Substances Act) broadly prohibits and criminalizes the production and use of marijuana. California law (the Compassionate Use Act and the Medical Marijuana Program Act) creates limited exceptions to the general criminal prohibition of marijuana production for certain gravely ill individuals who use marijuana as part of a treatment regimen. In turn, local ordinances typically regulate the cultivation and sale of marijuana within the ambit of the local government's police powers or zoning authority.

Marijuana is classified by the federal Controlled Substances Act ("CSA") as a Schedule I controlled substance, and therefore regulated by the Act. See 21 USC §§ 802(6); 812-Schedule I(c)(10). The CSA unambiguously makes it a criminal offense to "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance." See 21 USC § 841(a). However, California appellate courts have determined that the decriminalization of the cultivation and sale of marijuana under state law is not inconsistent with federal law because it does not mandate what federal law prohibits and poses no obstacle to the enforcement of federal law. See *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 757-763; but

EXHIBIT "A"

see also *Pack v. Superior Court of Los Angeles County (Long Beach)* (2011) 199 Cal.App.4th 1070 (depublished after dismissal of an appeal to the California Supreme Court).

Under the Compassionate Use Act of 1996 (“CUA” – codified at Health & Safety Code § 11362.5), it is legal to cultivate and possess marijuana for certain qualified patients and their healthcare providers. See *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 772-773. The CUA also encouraged the State to implement a plan to provide for the safe and affordable distribution of medical marijuana to qualified patients. See Health & Safety Code § 11362.5(b)(1)(C); *People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1014. Mindful of the command in the CUA, the Legislature enacted the Medical Marijuana Program Act (“MMPA”), effective January 1, 2004, adding Health & Safety Code §§ 11362.7 through 11362.83. See *People v. Wright* (2006) 40 Cal.4th 81, 93. The MMPA’s intended goals were set forth in *Qualified Patients Assn.*, 187 Cal.App.4th at 744:

Clarif[ication of] the scope of the application of the [CUA] and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers[,] [¶] Promot[ion of] uniform and consistent application of the act among the counties within the state[, and] [¶] Enhance[ment of] ... access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

Pursuant to the last goal, the MMPA included Health & Safety Code § 11362.775 which provides that people who “associate collectively or cooperatively to cultivate marijuana for medical purposes” are not subject to state criminal liability solely as a result of this cultivation activity or the sale of marijuana so cultivated. See also *Urziceanu, supra*, 132 Cal.App.4th at 745 (the MMPA “contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana”).

An issue repeatedly addressed by California courts and obviously germane to the instant motion is the extent to which local governments may regulate collectives or cooperatives that cultivate and dispense medical marijuana. The starting point for any such discussion is Health & Safety Code § 11362.83 which provides, among other things, that a city is not prevented from adopting and enforcing an ordinance that regulates the location, operation, or establishment of a medical marijuana cooperative or collective. Furthermore, section 11362.768(f) provides that “[n]othing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.” Many appellate decisions have interpreted the extent of a local government’s ability to regulate medical marijuana under the CUA and MMPA. See, e.g., *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 (medical marijuana dispensaries may be subject to zoning regulations in the same way as any other

business); *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 (no express or implicit preemption of the land use regulations by the CUA or the MMPA); *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861 (County authorized to regulate medical marijuana dispensaries).

Two recent opinions are especially relevant to this lawsuit: *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 (“AMCC”), and *420 Caregivers, LLC v. City of Los Angeles* (2012) 207 Cal.App.4th 703 (“420 Caregivers”). In *AMCC*, the appellate court held that a total ban on medical marijuana dispensaries was preempted by the MMPA. In *420 Caregivers*, the appellate court found that the trial court erred in determining that the imposition of criminal penalties to enforce the zoning provisions in the City ordinance was preempted by the MMPA.

The Long Beach Ordinances

The City’s current ordinance regulating medical marijuana dispensaries and collectives (Chapter 5.89) is a legislative reaction to the demise of the previous ordinance (Chapter 5.87) as a result of the Court of Appeal’s opinion in *Pack v. Superior Court of Los Angeles County*. Chapter 5.87 was a comprehensive scheme for the zoning, permitting and lawful operation of marijuana dispensaries and collectives in Long Beach. Unlike the local regulations of the County of Los Angeles in *AMCC*, Chapter 5.87 allowed the operation of collectives and dispensaries in a regulated and restricted manner. See, for informational purposes, *Pack*, 132 Cal.Rptr.3d 633 at 643-644. In *Pack*, the appellate court determined that Chapter 5.87 was preempted by federal law. *id.* at 650-654. Chapter 5.89 expressly repeals Chapter 5.87 (§ 3; p. 9:25-26) and imposes an unambiguous ban upon marijuana dispensaries and cultivation sites (§ 2; 5.89.010.A (p. 4:13-16); 5.89.030 (p. 7:1-15)). The ordinance also provides for administrative citations and that violations of the ordinance constitute a misdemeanor (§ 2; 5.89.060 (p. 9:8-16)). However, the ordinance excludes from its prohibition associations of three or fewer qualified individuals who cooperatively or collectively cultivate marijuana (§ 2; 5.89.020.E (p. 6:6-16)).

Injunctive Relief

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the likelihood that the petitioner will prevail on the merits of its case at trial, and (2) the interim harm that the petitioner is likely to sustain if the injunction is denied as compared to the harm that the respondent is likely to suffer if the court grants a preliminary injunction. See *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4th 1279, 1283; *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 408. Additionally, an injunction will not issue unless the moving party establishes both a real threat of immediate and irreparable interim harm (see *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 431), and the inadequacy of legal remedies (see *Triple A Machine Shop v. California* (1989) 213 Cal.App.3d 131, 138). The party seeking the injunction bears the burden of proof. See *O’Connell v.*

Superior Court of Alameda County (Valenzuela) (2006) 141 Cal.App.4th 1452, 1481. For the reasons set forth below, Plaintiffs' request for injunctive relief is denied.

1. Plaintiffs Have Not Established the Likelihood of Prevailing on the Merits

As an initial matter, Plaintiffs' contention that the fines and criminal penalties in Chapter 5.89 are preempted by state law is without merit. Health & Safety Code § 11362.83(b) expressly permits the imposition of criminal penalties to punish violations of "local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" permitted under § 11362.83(a). To the extent that the ordinance's prohibitions themselves are not invalid, the criminal penalties are not preempted by state law. See also *420 Caregivers, supra*, 207 Cal.App.4th at 740-742.

The main thrust of Plaintiffs' argument is that Chapter 5.89 constitutes a "total" ban on medical marijuana in Long Beach, and that such a ban is preempted by the MMPA under the *AMCC* opinion. Defendant, for its part, exhorts the Court to ignore *AMCC* in favor of *420 Caregivers*. Both parties seem to conclude that these precedents are diametrically opposed. The Court disagrees. The Court of Appeal in *AMCC* was faced with a County of Los Angeles ordinance which constituted a total ban: "medical marijuana dispensaries which distribute, transmit, give, or otherwise provide marijuana to any person, are prohibited in all zones in the County." See *AMCC*, 207 Cal.App.4th at 606. By comparison, the Court of Appeal in *420 Caregivers* dealt with a sunset provision in a City of Los Angeles ordinance which would have required dispensaries to cease functioning in two years if the ordinance was permitted to sunset. See *420 Caregivers*, 207 Cal.App.4th at 721. However, the City ordinance only regulated "incorporated or unincorporated associations of *four or more* qualified patients, persons with identification cards, or primary caregivers, who collectively or cooperatively associate at a given location to cultivate medical marijuana." *Id.* at 720-721. Upon modification, the *420 Caregivers* court added a clarifying sentence to its opinion, noting that it considered micro-collectives of three or fewer qualified patients or their caregivers to sufficiently permit the cultivation and use of medical marijuana, preventing the fact scenario before the Court of Appeal from being a "total ban" situation. *Id.* at 742. Accordingly, the precedents should not be read as entangled in some insoluble legal conflict. *AMCC* stands for the proposition that a total ban on medical marijuana by a local public entity is preempted by the CUA and the MMPA, while *420 Caregivers* holds that even a severe restriction on the size of a collective by a local entity is distinct from a total ban.

The factual scenario presented here is substantially similar to the one at issue in *420 Caregivers*. Section 5.89.020.E exempts collectives of three or fewer from the prohibitions of Chapter 5.89, the same way the challenged City ordinance in *420 Caregivers* only regulated collectives or cooperatives with four or more members. Pursuant to the holding in *420 Caregivers*, the Court finds that Chapter 5.89 is not preempted by the MMPA. While cultivation by three or fewer qualified patients may not be ideal and will impose certain hardships, it obviously does not constitute a total ban on medical marijuana. Qualified patients and primary caregivers may still cultivate

marijuana for approved medical purposes, and may still do so in collectives—even if these collectives are not optimally suited to wide distribution of medical marijuana.

2. Plaintiffs Have Not Established Irreparable Harm

Given Plaintiffs' failure to provide admissible and credible evidence of interim harm beyond Mr. Williams' plight and the countervailing injury to Defendant, the equitable calculus tips in favor of Defendant. *Pillsbury, Madison & Sutro, supra*, 55 Cal.App.4th at 1283. The only competent declaration of a qualified patient's prospective deprivation comes from Timothy Williams who contends that he requires medical marijuana to treat "stage 4" sciatic nerve damage arising from a workplace injury (Williams Decl. ¶ 6). While the Williams Declaration may support an inference of the inadequacy of the "three or less" residential cultivation loophole in Chapter 5.89 (¶ 9) as to him, it does not do so with regard to that of "[his] fellow patients (¶ 10)." That is, Williams establishes no testimonial competency as to the condition of fellow members of the collective and provides no evidence as to the nature of his fellow patients' maladies or the necessity of their access to medical marijuana from the collective. Even Davis, who declares that he is a qualified patient (Davis, ¶ 5), does not set forth any specific information regarding the nature of the deprivation faced by Savia's various members. For example, while Davis established that the collective is composed of qualified patients "some" of whom have serious and life-threatening illnesses (¶ 15), the Court is left to guess at how many members the collective actually has, what percentage of those individuals are qualified patients as distinct from caregivers (see ¶ 19(a)), and what percentage of those patients are part of the "some" which are suffering from serious or life-threatening conditions which marijuana treats or ameliorates. In addition, Davis is not a physician so is not competent to testify as to medical necessity.

Plaintiffs also argue that the City's ordinance is a taking requiring just compensation under both the United States and California Constitutions. See, generally, *Needles v. Griswold* (1992) 6 Cal.App.4th 1881. However, since the City possesses the power of eminent domain, an injunction is not the proper remedy. Instead, Plaintiffs should amend their pleading or file a new lawsuit to assert a claim for inverse condemnation for "just compensation" which necessarily implies the adequacy of a money-damages remedy. In any event, based on the evidence before the Court, the current ordinance is reasonable and strikes a balance between public safety and welfare and the rights of medical marijuana collectives and their patients. Plaintiffs' additional arguments appear to be afterthoughts and, in any event, are not persuasive.

Disposition

For these reasons, the order to show cause is discharged and the request for a preliminary injunction is DENIED.

Plaintiffs' request for judicial notice is DENIED as to Exhibit A, and GRANTED as to EXHIBITS B through G.

Defendant's request for judicial notice is GRANTED.

Defendant's objection to Dege Coutee's entire declaration is OVERRULED. However, the City's objection is well-taken insofar as Coutee is not qualified to opine that its ordinance is a de facto ban on all medical marijuana dispensaries.

The Court's rulings on Plaintiffs' objections are set forth in the separately attached order. Defendant shall provide notice.

IT IS SO ORDERED.

August 30, 2012

LS | **LUIS A. LAVIN**
Luis A. Lavin
Judge, Superior Court of California
County of Los Angeles

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September 28, 2012

VIA REGULAR MAIL, FACSIMILE AND EMAIL

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Re: City of Long Beach v. Bentech LLC – Business License No. BU93014571
Response to Request for Reconsideration

Dear Mr. Glassman:

Appellants Bentech LLC and Healing Tree Holistic Association (collectively, “Appellants”) appreciate the opportunity to respond to the City of Long Beach’s (“City”) request for reconsideration of your report and recommendation issued on September 20, 2012, reversing the May 30, 2012, recommendation of hearing officer Thomas Ramsey.

The City cites two bases upon which to grant reconsideration: (1) the City contends that because the California Supreme Court granted review of the appellate court decision *County of Los Angeles v. Alternative Medical Cannabis Collective* (2012) 207 Cal.App.4th 601 (“AMCC”), no citable authority exists states that local authorities cannot enact total bans on medical marijuana collectives and dispensaries; and (2) the City’s allegation that it permits collectives of three (3) or less members.

As to the first issue, Appellants do not dispute that review was granted in the AMCC case, but vehemently deny the remainder of the City’s argument. Your report and recommendation appears to be based, in part, on AMCC determining that the County of Los Angeles’ total ban conflicted with California’s medical marijuana laws. The AMCC court found that the total ban was preempted by Civil Code section 3482 and Health & Safety Code sections 11362.775 and 11362.768. (AMCC, *supra*, 207 Cal.App.4th at pp. 723-725.)

That finding was not based on any other case upon which review was granted. Rather, it was based solely on the analysis of those statutes. The same reasoning is applicable here, was cited by the Appellants in their brief, and should serve as the same basis upon reach to same conclusion reached in AMCC, i.e., that the Long Beach Municipal Code chapter 5.89 (the “Ordinance”) as a total ban on collectives and dispensaries conflicts with Civil Code section 3482 and Health & Safety Code sections 11362.775 and 11362.768.

Your report and recommendation also appeared premised on *AMCC*'s reasoning that designating the Ordinance as a zoning ordinance did not save it from being preempted by the medical marijuana laws. The analysis on this issue in *AMCC* is premised solely on the contradiction between a total ban and Health & Safety Code section 11362.775, specifically its express inclusion of Health & Safety Code section 11570, and the reasoning in *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893. (*AMCC*, *supra*, 207 Cal.App.4th at p. 728.)

Since neither the Health & Safety Code nor the *Sherwin-Williams* case has lost their citable authority, the reasoning in your report and recommendation remains fully supported by statute and case law. If a local law contradicts with a state law, preemption exists. (*Sherwin-Williams*, *supra*, 4 Cal.4th at 897.) Since the Ordinance contradicts Health & Safety Code section 1132.775, it is still preempted even disguised as a zoning ordinance.

You are completely justified in relying on the reasoning in *AMCC* because beyond not being citable, the Supreme Court's official position is that no substantive effect may be "read into" the court's action of granting review. A Supreme Court order directing depublishation of an opinion in the Official Reports "is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion." (CRC 8.1125(d); see *People v. Saunders* (1993) 5 Cal.4th 580, 592, fn. 8; *State Farm Mut. Auto. Ins. Co. v. Davis* (9th Cir. 1991) 937 F.2d 1415, 1420, fn. 4 [depublishation order disregarded in determining status of California law].)

Thus, that you relied on *AMCC* for your reasoning, and that *AMCC* has been depublished due solely to a grant of review by the Supreme Court is no reason to abandon your logic and reasoning now.

In regards to the second basis upon which the City requests reconsideration, the City is misleading in its argument that it permits collectives with three (3) or less members. The City does not permit any marijuana to be distributed in the City limits, medical or non-medical. (LBMC 5.89.030.) Rather, a "Medical Marijuana Dispensary" requires at least four (4) people to meet the definition created by the City in order to be subject to the Ordinance enforcement provisions.

Nothing in the LBMC permits three (3) individuals to possess, grow or exchange marijuana for any reason. Nothing in the LBMC prevents the City from attempting to allege that such a collective is a nuisance. That the City will not attempt to enforce the Ordinance against collectives that have only three (3) members (which is not even a realistic concept) does not mean that the City permits collectives or that it will not attempt to cease a collective from operating through another method or tool.

In fact, if *Pack v. Superior Court* has any application, it is to the City where the City Attorney took the position that municipalities cannot permit violations of federal law and that is exactly what former LBMC chapter 5.87 did. The City Attorney's office cannot reasonably argue out of the other side of its mouth that the City now permits small collectives.

For all of the reasons stated in your report and recommendation, and for those reasons set forth hereinabove, the Appellants respectfully request you to deny the City's request for reconsideration, particularly on the grounds stated in its September 25, 2012, letter.

If you have any further questions or concerns, or require any additional briefing, please do not hesitate to contact the undersigned.

Sincerely,

LEIDERMAN DEVINE LLP

James B. Devine

JBD

Cc: Healing Tree Holistic Association (via email)
Bentech, LLC (via fax 714-921-9787)
Kendra L. Carney, City Attorney (via fax 562-436-1579)



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

J. CHARLES PARKIN
Assistant City Attorney

September 26, 2012

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Monte H. Machit

DEPUTIES

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Gary J. Anderson
Richard F. Anthony
Kendra L. Carney
Christina L. Chocel
Charles M. Gale
Barkara J. McTigue
Barry M. Meyers
Howard D. Russell
Tiffany L. Shin
Linda Trang
Amy R. Webber
Theodore B. Zinger

VIA U.S. MAIL & EMAIL

Joel T. Glassman, Esq.
Law Offices of Joel T. Glassman
11620 Wilshire Blvd., Suite 340
Los Angeles, CA 90025

RE: **Matter of Bentech, LLC - Recommendation of Appeal Hearing
Officer in the Matter of Business License No. BU93014571
Our File No.: A12-01177**

Dear Mr. Glassman:

Thank you for your prompt response. For your convenience, I've enclosed a copy of the Supreme Court docket in *County of Los Angeles v. Alternative Medical Cannabis Collective*, case number S204663. California Rule of Court 8.1005(e) states that unless otherwise ordered, an opinion is no longer considered published if the Supreme Court grants review or the rendering court grants rehearing.


Additionally, to aid the review process, I've enclosed a copy of Long Beach Municipal Code Chapter 5.89, included in the City's evidence packet for the original hearing in tab 6, and previously provided to you and Mr. Devine. It is not necessary to review testimony from the appeal hearing as the City's ordinance conclusively states in section 5.89.020(e) that collectives of three or fewer may continue to operate.

Please do not hesitate to ask should you require additional documents or briefing.

Best regards,

Very truly yours,

ROBERT E. SHANNON, City Attorney

By: 
KENDRA L. CARNEY
Deputy City Attorney

KLC:jp


I:\apps\citylaw\32\wpdocs\d025\p016\00346998.doc

ecc: Thomas Ramsey, Hearing Officer
James Devine, Attorney for Bentech, LLC

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court 

Court data last updated: 09/26/2012 09:05 AM

Docket (Register of Actions)

**LOS ANGELES, COUNTY OF v. ALTERNATIVE MEDICINAL CANNABIS
COLLECTIVE**
Case Number **S204663**

Date	Description	Notes
08/13/2012	Petition for review filed	Plaintiff and Respondent: County of Los Angeles Attorney: Sari Janice Steel
08/13/2012	Record requested	emailed
08/13/2012	Request for judicial notice filed	Plaintiff and Respondent: County of Los Angeles Attorney: Sari Janice Steel
08/16/2012	Received Court of Appeal record	one doghouse (volume 1 of 2)
08/20/2012	Received:	Petitioner's notice of errata of petition for review; substitution of pages, and citations that were inadvertently omitted from the Table of Authorities. By counsel Sari J. Steel
08/28/2012	Request for depublication (petition for review pending)	Pub/Depublication Requestor: League of California Cities Attorney: Stephen A. McEwen Pub/Depublication Requestor: California State Association of Counties Attorney: Stephen A. McEwen
09/19/2012	Petition for review granted; briefing deferred	The petition for review is granted. Further action in this matter is deferred pending consideration and disposition of related issues in City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc. et al., S198638 and People et al. v. G3 Holistic, Inc., S198395 (see Cal. Rules of Court, rule 8.512 (d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 8.520, is deferred pending further order of the court. Votes: Cantil-Sakauye, C.J., Kennard, Baxter, Werdegar, Chin, Corrigan, and Liu, JJ.
09/19/2012	Letter sent requesting	

	certification of interested parties/entities	
09/19/2012	Additional record requested	
09/21/2012	Received additional record	one doghouse (volume 2)

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Judicial Council of California / Administrative Office of the Courts

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

ORDINANCE NO. ORD-12-0004

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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

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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

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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

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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

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

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

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

E. "Medical Marijuana Dispensary or Dispensary" means any association, business, facility, use, establishment, location, delivery service, cooperative, collective, or provider, whether fixed or mobile, that possesses, cultivates, distributes, or makes available medical marijuana to any person, including: a Primary Caregiver, a Qualified Patient, or a patient with an Identification Card. The term "Medical Marijuana Dispensary" does not include three (3) or fewer qualified patients or their primary caregivers who associate at a particular location or property in the City to collectively or cooperatively cultivate or distribute medical marijuana amongst themselves in accordance with all applicable provisions of state law.

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

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

1 5.89.030 Medical marijuana dispensary prohibited.

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

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

16
17 5.89.040 Establishment, maintenance, or operation of medical marijuana
18 dispensaries declared a public nuisance.

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

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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.

27 //

28 //

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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 February 14, 2012, the ordinance was

26 //

27 //

28

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ROBERT E. SHAI, M, City Attorney
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1 declared to be an emergency by the following vote:

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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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333 West Ocean Boulevard, 11th Floor
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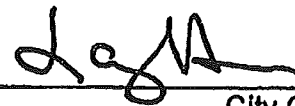
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I further certify that the foregoing ordinance was thereafter adopted on final reading of the City Council of the City of Long Beach at its meeting of February 21, 2012, by the following vote:

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

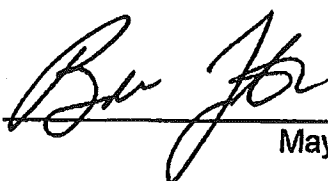
Noes: Councilmembers: Schipske, Gabelich.

Absent: Councilmembers: None.



City Clerk

Approved: 2/28/12
(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	Comerstone Health & Wellness	1838 E Wardlow Rd
4rincu	Emerald Beach Care	1932 E Anaheim St
fcc16e	Earthheart 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
7v1lwd	Calm Collective Wellness Center	2515 E Anaheim St
xki41a	1 Love Beach Cooperative	2767 E Broadway
d6l8qk	CARE Alternative Meds	3009 South St
c3olvw	Alternate Health Collective Association	3428 Long Beach Blvd
50hjnt	Belmont Shore Natural Care *Collective*	5375 2nd St
ntfpmm	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

LAW OFFICES OF JOEL T. GLASSMAN

12301 Wilshire Blvd., Suite 500
Los Angeles, CA 90025
Telephone (310) 266-5529
Facsimile (310) 910-0558
Email: Jtglassman@gmail.com

RECEIVED
CITY CLERK
LONG BEACH, CA
12 SEP 24 AM 10:30

September 20, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 W Ocean Blvd.
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Appeal Hearing Officer; Administrative Citation No. BU93014571; Matter of Bentech and City of Long Beach Appeal of Revocation of Business License Number BU93014571 issued to Bentech LLC

Dear Mr. Herrera:

On September 12, 2012, I conducted a hearing on appeal of the administrative officer's recommendation as contained in his May 30, 2012 Report and Recommendation of Hearing Officer ("Ramsey Recommendation") that the City of Long Beach Business License Number BU93014571 issued to Bentech LLC ("Bentech"), be revoked.

For the reasons stated below, I recommend that the Ramsey Recommendation be reversed.

The hearing was recorded. The recording is in your possession.

The hearing has been completed.

This letter constitutes my report and recommendation.

1. Introduction

The parties agreed that this hearing is an appeal from the record of the May 16, 2012 hearing and the findings of fact as contained in the Ramsey Recommendation are accepted as the finding of facts in this hearing and was and are not in dispute at this hearing.

2. Legal Issues

The legal issue in contention in this hearing was whether or not based on the accepted findings of fact that the City of Long Beach (the "City") could effectuate through the enacting of Long Beach Municipal Code Section 5.89 *et seq.*, a complete ban on all marijuana collectives and in particular, the subject establishment and therefore revoke Bentech's business license.

Another issue that was considered was the position of the City that the license revocation could alternatively be justified due to a lack of a business inspection under zoning laws.

3. Parties and Counsel

Appellee, the City, was represented by Deputy Long Beach City Attorney Kendra L. Carney.

Appellants, Bentech and The Healing Tree Holistic Association, were represented by James B. Devine.

4. Hearing Location and Date

Pursuant to written notice, the matter was heard at Long Beach City Hall, 333 W. Ocean Blvd, Lower Level, Council Lounge, Long Beach, CA. The hearing commenced at approximately 3:20 p.m.

5. Additional Pleadings

An Appellants' Brief was submitted by counsel for Bentech. In addition, with permission from the undersigned, counsel for Bentech timely submitted a Supplemental Appellants' Brief.

Counsel for the City of Long Beach did not file any brief.

6. Conclusion

The Long Beach complete ban on all medical marijuana collectives purportedly under Long Beach Municipal Code Section 5.89 *et seq.* was and is overbroad and is therefore void as it conflicts with existing California law, and in particular, California medical marijuana laws. As determined in the recent California appellate case, County of Los Angeles v Alternative Medicinal Cannabis Collective, 207 Cal.App.4th 601 (July 2012), which was cited in appellants' brief, the Los Angeles County complete ban on all medical marijuana dispensaries, including collectives and cooperatives was preempted because it conflicted with California's medical marijuana laws. Furthermore, viewing the County's ban as a nuisance or zoning law violation did not save it from preemption as noted by the Cannabis court.

In addition, Cannabis, *supra*, as indicated above, is also dispositive of any zoning issues raised by the City of Long Beach in this hearing but the City's argument that the failure of the establishment in question to have an inspection is also a circuitous and meritless argument. The City's representative acknowledged in his testimony at this hearing that the City would not allow such an inspection because of the very nature of the business, i.e., a marijuana dispensary.

The undersigned does recognize that the law in this area is fluid and may change once a definitive opinion is reached, particularly in the California Supreme Court. Therefore, the undersigned further recommends that the City should have the right to revoke the subject business license in the future depending on further legal opinions, especially, but not necessarily limited, to the California Supreme Court subject to a further administrative hearing as appropriate.

Accordingly, it is recommended by the undersigned that the May 30, 2012 recommendation of hearing officer, Thomas A. Ramsey, be reversed and that business license number BU93014571 issued to Bentech LLC, either not be revoked or be reinstated, as appropriate and consistent with this recommendation.

Respectfully submitted,


Joel T. Glassman

cc: Kendra L. Carney, Deputy City Attorney
James B. Devine

May 30, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Hearing Officer

Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC

Dear Mr. Herrera:

On May 16, 2012, I conducted an administrative hearing to show cause why the captioned business license should not be revoked pursuant to Long Beach Municipal Code §3.80.429.1.

The hearing was recorded. The recording is in your possession.

The hearing has been completed.

This letter constitutes my report and recommendation.

1. INTRODUCTION

In this report:

- The City of Long Beach is referred to as “the City.”
- The Director of Financial Management for the City is referred to as “the Director.”
- Bentech LLC is referred to as “the Licensee.”
- The improved real property commonly known as 3721 East Anaheim Street, Long Beach, is referred to as “the Premises.”
- City of Long Beach Business License Number BU93014571 is referred to as “the License.”

THOMAS A. RAMSEY - A PROFESSIONAL CORPORATION - LAWYER

NINETEENTH FLOOR 111 WEST OCEAN BOULEVARD LONG BEACH, CALIFORNIA 90802-4632
VOICE 562-436-7713 FACSIMILE 562-436-7313 E-MAIL bizlawwiz@aol.com

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Two

- All references to titles, chapters or sections, without an accompanying reference to a specific code, are to the Long Beach Municipal Code.

Accompanying this report is a copy of the exhibits introduced by the City at the hearing. They are numbered 1-9.

The basis for this hearing is found in §§3.80.429.1 and 3.80.429.5, which provide as follows:

- The belief that a licensee has failed to comply with applicable ordinances or statutes empowers the Director to notice a hearing at which the licensee may show cause why the license should not be revoked.
- Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
- In the event the license is revoked by the Director, the licensee has the right to file a written appeal to the Long Beach City Council.

2. HEARING LOCATION AND DATE

Pursuant to written notice (Exhibit 1), the matter was heard at Long Beach City Hall, 333 West Ocean Boulevard, Seventh Floor Large Conference Room, on May 16, 2012, commencing at 3:10 p.m.

3. PARTIES AND COUNSEL

The City was represented by the Long Beach City Attorney, through Kendra L. Carney, Deputy City Attorney.

The Licensee was represented by James B. Devine.

4. STATEMENT OF THE ISSUE BEFORE THE HEARING OFFICER

The issue in this matter is as follows: Is the Licensee operating its commercial rental business at the Premises outside the scope of the authorized business activities identified in its business license?

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Three

5. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY

Eric Sund (City of Long Beach Business Relations Manager) and Ray Gehring (City of Long Beach License Inspector) testified on the City's behalf.

Exhibits 1-9, introduced by the City, were placed into evidence.

The testimony of Eric Sund was as follows:

- The Licensee holds title to the Premises (Exhibit 3).
- Business license number BU07044741, issued to the Licensee, permits the Licensee to lease all or any portion of the Premises to others (Exhibit 2).
- On various visits to the Premises, it was determined that one of the Licensee's lessees operates a medical marijuana collective, apparently under the name "The Healing Tree." This determination was based on the following observations: On the exterior was displayed a green cross (the usual symbol of a marijuana dispensary; patients were observed leaving the premises with paper bags of the product; the collective advertised on the internet for the sale of medical marijuana. An administrative citation was issued to the collective and posted on its portion of the Premises. Additionally, written notice was sent to the Licensee, advising it that the collective is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- Written notice of this hearing, in the form of Exhibit 1, was mailed to the Licensee.

Ray Gehring testified that he had visited the Premises on various occasions, interviewed a security guard on the premises. During each visit, he observed transactions involving the sale of marijuana by the collective.

6. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE LICENSEE

Mr. Farano submitted a brief on behalf of the Licensee, which has been reviewed. It appears as the Licensee's Exhibit A.

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Four

7. ADDITIONAL PLEADINGS

At the conclusion of the hearing, counsel for the Licensee asked permission to file an additional brief or memorandum.

A briefing schedule was established as follows:

- May 18, 2012, will be the deadline for counsel for the Licensee to file and serve his brief or memorandum.
- May 25, 2011, will be the deadline for the City Attorney to file and serve her response.

Counsel for the Licensee did not file or serve any brief or memorandum.

8. FINDINGS OF FACT

The findings of fact are as follows:

- A. The Licensee is the owner of the Premises.
- B. Business license number BU93014571, issued to the Licensee, authorizes the Licensee to operate a commercial/industrial space rental business at the Premises.
- C. One of the Licensee's lessees is known as The Healing Tree.
- D. The Healing Tree operates a medical marijuana collective, in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- E. Written notice was sent to the Licensee and to The Healing Tree advising them that The Healing Tree is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- F. The Licensee has knowledge of the nature of the business of the collective.
- G. The collective continues to operate from a portion of the Premises.
- H. Written notice of this hearing was mailed to the Licensee.

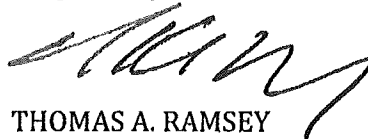
Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Five

9. RECOMMENDATION

The business license issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. By leasing/renting/licensing/permitting an unlicensed medical marijuana dispensary on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in his business license.

In this factual setting, it is recommended that the City of Long Beach Business License Number BU93014571 issued to Bentech LLC be revoked.

Respectfully submitted,



THOMAS A. RAMSEY

TR:dc
Attachments as noted



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 W. Ocean Boulevard, 4th Floor •

Long Beach, CA 90802 •

(562) 570-6212

FAX (562) 570-6180

BUSINESS RELATIONS BUREAU
BUSINESS LICENSE SECTION

June 6, 2012

Bentech LLC
4431 E. Pepper Creek Way
Anaheim, CA 92807

RE: Notice of Business License Revocation
Business License Number: BU93014571

Dear Sir or Madam:

Please be advised that **business license number BU93014571**, issued to Bentech LLC, located at 3721 E. Anaheim Street, Long Beach, CA 90804 **has been revoked**, pursuant to Long Beach Municipal Code ("LBMC") section 3.80.429.1, subsection (b), **effective June 6, 2012**. Pursuant to LBMC section 3.80.429.1, you have 10 calendar days from the date of this letter to request an appeal, otherwise the revocation will be final.

Failure to cease operations at this location after June 16, 2012 shall constitute a criminal offense pursuant to Long Beach Municipal Code sections 3.80.429.1, subsection (a) and 3.80.210.

Pursuant to Long Beach Municipal Code section 3.80.429.5, a request to appeal must be in writing, must set forth the specific ground or grounds on which it is based, and must be accompanied by a non-refundable cashier's check or money order, made payable to the City of Long Beach, in the amount of \$1,205. The request for appeal must be submitted to the Office of the Long Beach City Clerk, located at 333 W. Ocean Boulevard, Long Beach, California, not later than 4:00 p.m. June 16, 2012. Should you have any questions, please contact me at (562) 570-6663.

Sincerely,

Erik Sund
Manager, Business Relations Bureau

I have received notification of the
above:

Attachments

ES:smc

Name/Title

cc: Kendra Carney, Deputy City Attorney
Council District 4

May 30, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Hearing Officer

Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC

Dear Mr. Herrera:

On May 16, 2012, I conducted an administrative hearing to show cause why the captioned business license should not be revoked pursuant to Long Beach Municipal Code §3.80.429.1.

The hearing was recorded. The recording is in your possession.

The hearing has been completed.

This letter constitutes my report and recommendation.

1. INTRODUCTION

In this report:

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- Bentech LLC is referred to as “the Licensee.”
- The improved real property commonly known as 3721 East Anaheim Street, Long Beach, is referred to as “the Premises.”
- City of Long Beach Business License Number BU93014571 is referred to as “the License.”

THOMAS A. RAMSEY - A PROFESSIONAL CORPORATION - LAWYER

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Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Two

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Accompanying this report is a copy of the exhibits introduced by the City at the hearing. They are numbered 1-9.

The basis for this hearing is found in §§3.80.429.1 and 3.80.429.5, which provide as follows:

- The belief that a licensee has failed to comply with applicable ordinances or statutes empowers the Director to notice a hearing at which the licensee may show cause why the license should not be revoked.
- Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
- In the event the license is revoked by the Director, the licensee has the right to file a written appeal to the Long Beach City Council.

2. HEARING LOCATION AND DATE

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The Licensee was represented by James B. Devine.

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The issue in this matter is as follows: Is the Licensee operating its commercial rental business at the Premises outside the scope of the authorized business activities identified in its business license?

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Page Three

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Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Four

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At the conclusion of the hearing, counsel for the Licensee asked permission to file an additional brief or memorandum.

A briefing schedule was established as follows:

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Counsel for the Licensee did not file or serve any brief or memorandum.

8. FINDINGS OF FACT

The findings of fact are as follows:

- A. The Licensee is the owner of the Premises.
- B. Business license number BU93014571, issued to the Licensee, authorizes the Licensee to operate a commercial/industrial space rental business at the Premises.
- C. One of the Licensee's lessees is known as The Healing Tree.
- D. The Healing Tree operates a medical marijuana collective, in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
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Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU93014571 issued to Bentech LLC
May 30, 2012
Page Five

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The business license issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. By leasing/renting/licensing/permitting an unlicensed medical marijuana dispensary on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in his business license.

In this factual setting, it is recommended that the City of Long Beach Business License Number BU93014571 issued to Bentech LLC be revoked.

Respectfully submitted,



THOMAS A. RAMSEY

TR:dc
Attachments as noted

LEIDERMAN DEVINE LLP

5740 RALSTON STREET, SUITE 300, VENTURA, CA 93003

TELEPHONE 805-654-0200 FACSIMILE 805-654-0280

WWW.LEIDERMANDEVINE.COM

JAY LEIDERMAN*
 JAMES B. DEVINE
 TAYLOR L. EMERSON

*STATE BAR CERTIFIED CRIMINAL LAW SPECIALIST

June 14, 2012

VIA OVERNIGHT MAIL ONLY

CITY OF LONG BEACH
OFFICE OF THE CITY CLERK
 333 West Ocean Blvd.
 Long Beach, CA 90802

Re: Bentech, LLC
 Your letter of June 6, 2012
 Business License Number: BU93014571

REQUEST TO APPEAL REVOCATION OF BUSINESS LICENSE NO. BU93014571
PURSUANT TO LONG BEACH MUNICIPAL CODE SECTION 3.80.429.5

Dear Sir or Madam:

Please be advised that this office and the undersigned represent Bentech, LLC ("Bentech") by way of an indemnity agreement with Healing Tree Holistic Association (the "Collective"). We are in receipt of your June 6, 2012 correspondence to Bentech wherein the City of Long Beach ("City") effectively revoked business license number BU93014571.

Pursuant to Long Beach Municipal Code section 3.80.429.5, this correspondence serves as a request to appeal the revocation of the business license. Accordingly, enclosed please find a check in the amount of \$1,205 made payable to the City for the costs associated with filing the appeal. The appeal is based upon the grounds that Bentech's business license was revoked because it permitted the Collective to operate allegedly in violation of Long Beach Municipal Code ("LBMC") Chapter 5.89, as amended on February 14, 2012 (the "Amended Ordinance"). It is the Collective/Bentech's position that the Amended Ordinance is unenforceable for each and all of the following reasons.

1. The Amended Ordinance conflicts with general law and is therefore void (see, e.g., Cal. Const., Art. 11, § 7; Gov. Code, § 37100; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061);
2. The Amended Ordinance is preempted by existing state law (see, e.g., *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898 [a local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law]; *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 911 ["[i]f the preemption doctrine means anything, it means that a local entity may not pass an ordinance, the effect of which is to completely frustrate a broad, evolutionary statutory regime enacted by the Legislature."]) including without

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CITY OF LONG BEACH
OFFICE OF THE CITY CLERK
June 14, 2012
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limitation Health & Safety Code section 11362.5, the Compassionate Use Act (“CUA”) and Health & Safety Code sections 11362.7 to 1132.768, the Medical Marijuana Program Act (“MMPA”), the intent of which are “to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction” and to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” (see Health & Saf. Code, §§ 11362.5, subs.(1)(A), (B), and (C), and 11362.7, subs. (b)(2) and (3));

3. The Amended Ordinance attempts to duplicate the California Uniform Controlled Substances Act (“UCSA”) (Health & Saf. Code, §§ 11000 et seq.);

4. The City may not rely on *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, or *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, to support enforcement of the Amended Ordinance because neither case involved an outright ban such as the Amended Ordinance (see *Qualified Patients Ass’n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 753-754, fn. 4 [“And both cases involved temporary moratoriums rather than the permanent dispensary ban alleged here. Again, cases are not determinative for issues not considered.”]);

5. The Collective and its members’ right to associate collectively or cooperatively to distribute and cultivate medical marijuana is protected by the right of privacy and is lawful under state law (see, e.g., Cal. Const., Art. 1, § 1) because in a public nuisance case, no injunctive relief is may burden the constitutional right of association more than is necessary to serve the significant governmental issue at stake (see, *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115, 1120-1122.; *People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1262);

6. Because (a) “[n]othing which is done or maintained under the express authorization of statute can be deemed a nuisance” (see Civ. Code, § 3482) and (b) Health & Safety Code section 11362.775 provides that qualified patients and designated primary caregivers who associate in California “in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions,” including under Health & Safety Code section 11570 (Health & Saf. Code, § 11362.775), the City may not determine the Collective’s conduct to be a nuisance.

7. The Amended Ordinance is overly broad and criminalizes otherwise lawful conduct;

8. The Amended Ordinance on its face and as applied is discriminatory (see, e.g., Gov. Code, § 65008, subd. (a)(1));

9. The Amended Ordinance deprives qualified patients and primary caregivers of vested property rights without the opportunity of a neutral hearing resulting in a deprivation of due process of law (see *Ryan v California Interscholastic Federation* (2001) 94 Cal.App.4th 1048);

CITY OF LONG BEACH
 OFFICE OF THE CITY CLERK
 June 14, 2012
 Page 3 of 4

10. The Amended Ordinance allows the City to prove criminal conduct with evidence that is less than “beyond a reasonable doubt” (see *Morrison v. California* (1934) 291 U.S. 82, 88-89, 54 S.Ct. 281, 78 L.Ed. 664; *In re Winship* (1970) 397 U.S. 358, 363-364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368; *People v. Lim* (1941) 18 Cal.2d 872, 880);

11. The Amended Ordinance is an impermissibly retroactive zoning law (see, e.g., *Scrutton v. Sacramento County* (1969) 275 Cal.App.2d 412, 420 [zoning ordinance may not immediately suppress or force removal of an otherwise lawful business or use]; *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 321 [if a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power].)

12. Because the Amended Ordinance imposes quasi-criminal penalties, any citee should be afforded all of the due process protections found in criminal proceedings. In *Department of Revenue of Montana v. Kurth Ranch* (1994) 511 U.S. 767, 781, the United States Supreme Court “considered whether a state tax imposed on marijuana was invalid under the Double Jeopardy Clause when the taxpayer had already been criminally convicted only a person charged with a criminal offense was subject to the tax. We also noted that the taxpayer did not own or possess the taxed marijuana at the time that the tax was imposed. From these differences, we determined that the tax was motivated by a ‘penal and prohibitory intent rather than the gathering of revenue.’” (See also *Austin v. United States* (1993) 509 U.S. 602, 619 [forfeiture proceeding].)

In this instance, the Collective/Bentech’s defense is not provided for in the LBMC. As evidenced by the “Notice of Administrative Citation Appeal and Request for Hearing,” a citee may only dispute (1) that they are not the responsible party, (2) the violation did not exist on the date of the citation, (3) the lot cleaning levy is unreasonable, or (4) the inoperable vehicle levy is unreasonable. It is the Collective and Bentech’s defense that the Amended Ordinance is not enforceable and violates California law.

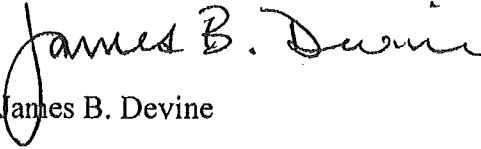
As recently stated in the *City of Lake Forest v. Evergreen Holistic Collective*, G043909, 2012 WL 639462 (Cal. Ct. App. Feb. 29, 2012), “the City [of Lake Forest]’s purported per se ban on medical marijuana dispensaries violates state medical marijuana law.... Put another way, the City’s purported per se nuisance bar against medical marijuana dispensaries directly contradicts the Legislature’s intent to shield collective or cooperative activity from nuisance abatement “solely on the basis” that it involves distribution of medical marijuana authorized by section [Health & Safety Code section] 11362.775, and because the Legislature has determined the issue is a matter of statewide concern, the City’s ban is preempted.”

Based upon the foregoing, Bentech respectfully appeals the revocation of the business license and requests a hearing. If you have any questions or concerns, please feel free contact me by telephone at 805-654-0200, extension 23, or by email at james@leidermandevine.com.

CITY OF LONG BEACH
OFFICE OF THE CITY CLERK
June 14, 2012
Page 4 of 4

Sincerely,

LEIDERMAN DEVINE LLP


James B. Devine

JBD

Enclosure: Leiderman Devine LLP Check No. 170 (\$1,205)

Cc: client
Bentech, LLC (via fax - 714-921-9787)