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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 5.91 TO ESTABLISH IMMUNITY FOR AND RESTRICTIONS ON MEDICAL CANNABIS BUSINESSES.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("Act") (codified as Health and Safety (H&S) Code § 11362.5, et seq.), which creates limited immunity from criminal liability under California law, as opposed to federal law, for seriously ill persons who are in need of medical cannabis for specified medical purposes and who obtain and use medical cannabis under limited, specified circumstances; and

WHEREAS, in 2004, Senate Bill 420, known as the Medical Marijuana Program Act ("Program"), became law (codified as H&S Code § 11362.7, et seq.), which established a statewide identification card program for qualified medical cannabis patients and their primary caregivers and extended the Act's limited immunity from criminal liability to collective and cooperative cultivation of medical cannabis; and

WHEREAS, Section 11362.83 of the Program provides that local governments are free to adopt laws that are consistent with State law; and as such, may impose greater restrictions on medical cannabis collectives than those imposed by the Program; and

WHEREAS, in August 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines") which affirms the immunity of medical marijuana

1 collectives and cooperatives under California law, but makes clear that such
2 entities cannot be operated for profit, may not purchase marijuana from unlawful
3 sources and must have a defined organizational structure that includes detailed
4 records proving that members are legitimate patients; and

5 WHEREAS, in March 2010, the Long Beach City Council approved former
6 Chapter 5.87 of the Long Beach Municipal Code (“LBMC”) permitting and
7 regulating Medical Cannabis Businesses; and

8 WHEREAS, on September 20, 2010, pursuant to former Chapter 5.87, the
9 City conducted a medical marijuana permit lottery (“Lottery”) where applicants
10 were selected and became eligible for medical marijuana collective permits; and

11 WHEREAS, on October 4, 2011, the Second Appellate District of the
12 California Court of Appeal ruled in the case of Pack v. Superior Court (199
13 Cal.App.4th 1070 (2011)) (“Pack”), holding that significant provisions of former
14 Chapter 5.87, which included regulations permitting and authorizing Medical
15 Cannabis Businesses, are preempted by the federal Controlled Substances Act
16 (“C.S.A”) (21 U.S.C. Section 801, et seq.); which bans cannabis for all purposes;
17 and

18 WHEREAS, on February 14, 2012, the Long Beach City Council repealed
19 former Chapter 5.87 and enacted Chapter 5.89 of the LBMC banning medical
20 cannabis collectives and cooperatives in the City of Long Beach; and

21 WHEREAS, in December 2011, California Attorney General Kamala Harris
22 abandoned her efforts to revise the medical marijuana Guidelines and advised
23 the State Legislature that in the opinion of the Attorney General, new legislation
24 is required in order to resolve questions of law regarding medical cannabis that
25 are not answered by existing law; and

26 WHEREAS, on May 6, 2013, the Supreme Court of California affirmed in
27 the case of City of Riverside v. Inland Empire Patients Health and Wellness
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1 Center (56 Cal.4th 729 (2013)) (“City of Riverside”) that the Act and Program did
2 not preempt local bans of Medical Cannabis Businesses; and

3 WHEREAS, numbers of lawsuits were filed by medical cannabis patients
4 and dispensaries against the City of Long Beach between 2010 and 2015; and

5 WHEREAS, it is the City Council's intention that this Ordinance shall be
6 deemed to comply with California law as established by the Act and the Program;
7 and

8 WHEREAS, it is the City Council's intention that nothing in this Ordinance
9 shall be construed to: (a) allow persons to engage in conduct that endangers
10 others or causes a public nuisance; or (b) allow the use of cannabis for non-
11 medical purposes of any kind; or (c) allow any activity relating to the cultivation,
12 distribution, or consumption of cannabis that is otherwise not permitted under
13 State law; and

14 WHEREAS, the City wishes to address issues related to Medical Cannabis
15 Businesses in the City by granting limited immunity from enforcement of its
16 prohibition of Medical Cannabis Businesses, as defined, to applicants seeking
17 immunity that achieve a point score based on factors set forth herein, with such
18 scoring being a ministerial function assessing objective criteria, and which further
19 comply with the requirements set forth herein, until such time as the City Council
20 adopts a new ordinance to the contrary;

21 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
22 follows:

23 SECTION 1. Chapter 5.91 is added to the Long Beach Municipal Code to
24 read as follows:

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1 C. "Cultivation" or "Cultivate" means: (1) all phases of growth of
2 cannabis from seed to harvest; or (2) preparing, packaging or repackaging,
3 labeling, or relabeling of a usable form of marijuana.

4 D. "Cultivation Facility" means a permitted Medical Cannabis Business
5 that is authorized to cultivate, produce, and harvest cannabis plants for medical
6 use for distribution by a Medical Cannabis Business.

7 E. "Distribute" or "Distribution" means the actual transfer, delivery, sale,
8 or dispensing to another, with or without remuneration.

9 F. "Financier" means any person or entity who invests, lends money,
10 grants, donates, or otherwise provides assets to any person applying for a permit
11 or who meets the immunity conditions and requirements specified in this
12 Chapter. Financier shall not include a bank, savings and loan association, credit
13 union, or industrial bank supervised and regulated by an agency of the state or
14 federal government.

15 G. "Cannabis" means the same as the slang term "marijuana" as set
16 forth in California Health and Safety Code section 11018 which defines
17 "marijuana" as all parts of the plant Cannabis Sativa L., whether growing or not;
18 the seeds thereof; the resin extracted from any part of the plant; and every
19 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its
20 seeds or resin. It does not include the mature stalks of the plant, fiber produced
21 from the stalks, oil or cake made from the seeds of the plant, any other
22 compound, manufacture, salt, derivative, mixture, or preparation of the mature
23 stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized
24 seed of the plant which is incapable of germination.

25 H. "Medical Cannabis" means cannabis used for medical purposes in
26 accordance with California Health and Safety Code Sections 11362.5 & 11362.7,
27 et seq.

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I. "Medical Cannabis Business" means:

- (1) any association of ten (10) or more individuals that cultivates, produces, sells, distributes, possesses, transports or makes available medical cannabis to qualified patients and their designated primary caregivers who associate at a particular location or Property to collectively cultivate or distribute medical cannabis in accordance with California Health and Safety Code Sections 11362.5 and 11362.7, et seq. For purposes of this Chapter, the term medical cannabis cooperative, collective, or dispensary shall have the same meaning as Medical Cannabis Business. Medical Cannabis Business includes, but is not limited to, dispensary storefront locations, cultivation facilities, medical cannabis-infused product manufacturers, or any combination of the above.
- (2) any person that cultivates, produces, sells, distributes, possesses, transports more than six mature cannabis plants or twelve (12) immature marijuana plants, or eight (8) ounces of a useable form of marijuana for medical use, pursuant to California Health and Safety Code section 11362.5, et seq.
- (3) The term Medical Cannabis Business shall not include the private possession, production, or medical use of no more than six (6) mature marijuana plants or twelve (12) immature marijuana plants, or eight (8) ounces of a useable form of marijuana by a patient or caregiver in the residence of the patient, unless otherwise specified by a physician and shall not include the personal possession, cultivation or use of an amount of marijuana medically necessary for a patient in possession thereof.

1 (4) The term Medical Cannabis Business shall not include a group of
2 nine (9) or fewer qualified patients who, each within the limits set
3 forth in subsection (3), above, cultivate and provide cannabis to only
4 the people in their group without profit and solely for the benefit of
5 the group.

6 J. "Medical Cannabis - Infused Product" means a cannabis-infused,
7 edible, ingestible, or inhalable product, including but not limited to, topical
8 solutions and vaporizers.

9 K. "Medical Cannabis - Infused Product Manufacturer" means a
10 licensed and permitted cannabis - infused product manufacturer.

11 L. "Medical Cannabis Plant" means a cannabis seed that is germinated
12 and all parts of the growth there from including, without limitation, roots, stalks
13 and leaves. For purposes of this Chapter, the portion of a medical cannabis plant
14 harvested from the plant or converted to a usable form of medical cannabis for
15 medical use is not considered part of the plant upon harvesting.

16 M. "Place Open to the General Public" means any property owned,
17 leased, or used by a public entity, and any place on private property open to the
18 public, common areas of buildings, private clubs, vehicles, those portions of any
19 private property upon which the public has an express or implied license to enter
20 or remain, and any place visible from such places.

21 N. "Possess" or "Possession" means having physical control of an
22 object, or control of the property in which an object is located, or having the
23 power and intent to control an object, without regard to whether the one in
24 possession has ownership of the object. Possession may be held by more than
25 one (1) person at a time. Use of the object is not required for possession. The
26 owner(s) of a Medical Cannabis Business shall be considered in possession of
27 the Medical Cannabis Business at all times. The general manager, or their
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1 designee, of a Medical Cannabis Business shall be considered in possession of
2 the Medical Cannabis Business at all times that the general manager is on the
3 property of the business or has been designated by the owner as the business
4 manager in the absence of the owner in accordance with this Chapter. Agent-in-
5 Charge should, or could, be a separate person from general manager.

6 O. "Property" means a distinct and definite location, which may include
7 a building, a part of a building, a room or any other defined contiguous area.

8 P. "Primary Caregiver" means the same as that term in California
9 Health and Safety Code Sections 11362.5 and 11362.7 which define "primary
10 caregiver" as an individual, designated by a qualified patient, who has
11 consistently assumed responsibility for the housing, health, or safety of that
12 qualified patient.

13 Q. "Produce" or "Production" means: (1) Preparing, compounding,
14 processing, encapsulating, packaging or repackaging, labeling or relabeling of
15 cannabis or its derivatives, whether alone or mixed with any amount of any other
16 substance; or (2) Combining cannabis with any other substance for distribution,
17 including storage and packaging.

18 R. "Responsible person" means any individual who is the owner, partial
19 owner, or occupant of real property, last registered owner and/or legal owner of a
20 vehicle, the holder, business manager, or the agent of the holder of any permit,
21 or the party or agent of a party to any agreement covered by this Chapter; or the
22 owner or authorized agent of any business, company or entity subject to this
23 Chapter.

24 S. "Restricted Area" means the portion of a Medical Cannabis Business
25 location within which the licensee defines on its application it intends to cultivate,
26 distribute, possess or produce medical cannabis and which area.

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1 T. "Violation of Any Law" means a conviction, whether by verdict or
2 finding of a violation of any law in a criminal, administrative proceeding, whether
3 part of a plea agreement, settlement agreement, or determination by an
4 arbitrator, hearing officer, court, or jury but does not mean conviction for any
5 infraction or minor offense.

6 U. "Attending physician" has the same definition as set forth in Health
7 and Safety Code section 11362.7.

8 V. "Guidelines" shall refer to the California Attorney General Guidelines
9 for the Security and Non-diversion of Marijuana Grown for Medical Use, issued
10 by the Attorney General's Office in August, 2008, as amended from time to time,
11 which sets regulations intended to ensure the security and non-diversion of
12 marijuana grown for medical use by qualified patients or primary caregivers.

13 W. "Delivery" means the act of taking something to a person or a place.

14 X. "Employee" means any person (whether paid or unpaid) who
15 provides regular labor or regular services for a Medical Cannabis Business,
16 including but not limited to at the location of a Medical Cannabis Business.

17 Y. "Identification card" means a document issued by the State
18 Department of Health Services that document identifies a person authorized to
19 engage in the medical use of marijuana and the person's designated primary
20 caregiver, if any.

21 Z. "Live scan" means a system for inkless electronic fingerprinting and
22 the automated background check developed by the California Department of
23 Justice ("DOJ") which involves digitizing fingerprints and electronically
24 transmitting the fingerprint image data along with personal descriptor information
25 to computers at the DOJ for completion of a criminal record check; or such other
26 comparable inkless electronic fingerprinting and automated background check
27 process as determined by the city council.

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1 AA. "General Manager" means an employee responsible for
2 management and/or supervision of a Medical Cannabis Business.

3 BB. "Lottery" means the September 20, 2010 Medical Marijuana Permit
4 Lottery conducted by the City pursuant to former Chapter 5.87.

5 CC. "Non-profit" means to use surplus revenue to achieve the goals of an
6 organization rather than distributing surplus revenue as profit or dividends.

7 DD. "Physical referral" means a written recommendation for a patient
8 from a licensed medical doctor indicating that cannabis would be a beneficial
9 treatment for a serious medical condition of the patient.

10 EE. "Police Department" means the Police Department of the City of
11 Long Beach ("LBPD").

12 FF. "Primary caregiver" has the same definition as set forth in Health and
13 Safety Code section 11362.7(d), (e), and as may be amended.

14 GG. "Qualified Patient" has the same definition as set forth in Health and
15 Safety Code section 11362.7(f).

16 HH. "Reasonable Compensation" means compensation commensurate
17 with wages and benefits paid to officers and employees of other not-for-profit
18 organizations who have similar job descriptions and duties, required level of
19 education and experience, prior individual earnings history, and number of hours
20 worked. (As per Attorney General Guidelines).

21 II. "Serious Medical Condition" has the same definition as set forth in
22 Health and Safety Code section 11362.7(h), and as may be amended.

23
24 **5.91.030 Medical Cannabis Business – Prohibition and Limited Immunity.**

25 (A) Pursuant to this Chapter and LBMC Chapter 5.89, in no event shall
26 a Medical Cannabis Business, as defined, be considered a permitted or
27 conditionally permitted use in any land use zoning district. A Medical Cannabis
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1 Business is prohibited in all land use zoning districts, as those may be amended
2 from time to time, and no permit of any type shall be issued therefore.

3 (B) Notwithstanding the activities prohibited by this Chapter, and
4 notwithstanding that Medical Cannabis Businesses are not and shall not become
5 a permitted use in the City for so long as this Chapter remains in effect, a
6 Medical Cannabis Business shall not be subject to the remedies set forth in the
7 LBMC or to enforcement by the City for violation of this or any other provisions,
8 so long as the Medical Cannabis Business complies with all requirements set
9 forth in this Chapter and achieves a score above other applicants seeking
10 immunity based on the following objective criteria, with each of the following
11 conditions providing one (1) point toward the applicant's score:

12 (1) Applicant applied to participate in the September 20, 2010 Lottery
13 (1pt).

14 (2) Between 2010 and 2012, Applicant was not subject to police arrests
15 of employees or volunteers at the lottery-winning location in the City where any
16 employee or volunteer was charged with and convicted of a felony resulting from
17 failure of the Applicant to comply with the Act, Program or Guidelines (1pt).

18 (3) Applicant will possess and use the same location operated while
19 former Chapter 5.87 was in effect, or had leased, rented or owned a real property
20 location pursuant to and in conformance with former Chapter 5.87 that was the
21 location where the Applicant applied to operate under that Chapter (1pt).

22 (4) Applicant provides a five (5) part comprehensive **Security Report**
23 outlining all required or supplemental security measures including: (a) details of
24 the video security system, including camera and monitor equipment
25 specifications; (b) floor plan outlining camera and monitor locations; (c) report of
26 all fire and burglar installed alarm systems, including data related to equipment to
27 be used and identifying the 24-hour monitoring company; (d) detailed report of
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1 security personnel including placement, if guards are armed or not, and the
2 identity and background of the security personnel; and (e) report detailing
3 building location and physical security implement, including, but not limited to,
4 bars and gates, security lighting, and measurements between parking spaces
5 and entry and/or exit to ensure maximum safety for patients and employees
6 (1pt).

7 (5) Applicant provides a comprehensive **Community Relations Plan**
8 outlining all aspects of interaction between the dispensary and the immediate
9 neighborhood, the City, and the community as a whole. The report should include
10 details of protocols and procedures to handle complaints by neighboring
11 residents and businesses, as well as by law enforcement and all City
12 departments. It should also define programs supplied by the Medical Cannabis
13 Business to educate the community about cannabis medicine and its benefits
14 regarding individual medical conditions. It should also include any resources
15 dedicated to the community such as pledges of charitable contributions, food
16 drives, veteran and indigent assistance, presentations of the arts, community
17 events, etc. The Applicant should include plans to contract or hire: (i) a veteran of
18 the United States military or reserve forces; or (ii) an individual who suffers from
19 one or more of the physical or mental conditions enumerated in subsections (1)
20 through (10) of H&S § 11362.7 (1pt).

21 (C) Applicants for immunity under this Chapter will be prioritized for
22 consideration based upon the score achieved under subsection (B) following
23 submission of an application under section 5.91.040(Q). The Department of
24 Finance shall set an initial submission date for applications to be received under
25 this Chapter. Priority for immunity shall be based upon the: 1) point score
26 achieved under subsection (B); and 2) order in time in which applications are
27 received by the Department of Finance. At the time application is made under
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1 section 5.91.040(Q), the Applicant shall submit any documentation required
2 under this Chapter including, but not limited to, submissions enumerated in
3 subsection (B) and documents supporting the scoring criteria.

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5 5.91.040 Medical Cannabis Business – Immunity Requirements.

6 A. All Medical Cannabis Businesses must at all times maintain workers'
7 compensation insurance as required by the California Labor Code and
8 employer's liability insurance in an amount not less than \$1,000,000. This policy
9 shall be endorsed to state that the insurer waives its right of subrogation against
10 City, its boards and commissions, and their officials, employees, and agents,
11 public liability insurance with minimum limits of \$250,000 for any one person and
12 \$1,000,000 for any one accident, and public property damage insurance with a
13 minimum limit of \$500,000 for any one accident.

14 B. All Medical Cannabis Businesses shall provide to the City a lighting
15 plan showing the lighting outside of the Medical Cannabis Business and
16 compliance with applicable City requirements.

17 C. All Medical Cannabis Businesses shall provide to the City color
18 images and a site plan indicating locations of proposed signage.

19 D. All Medical Cannabis Businesses shall provide to the City fully
20 legible copies of one valid government issued form of photo identification, such
21 as a State Driver's License or Identification Card and Live Scan fingerprinting
22 completed at the Long Beach Police Department for each Agent in Charge,
23 business manager and financier, who is employed by or under contract to
24 provide services to the Medical Cannabis Business, including all individuals who
25 have an interest as described herein of any portion of the Medical Cannabis
26 Business, directly or as an owner, agent, or officer of a corporation, partnership,
27 association or company.

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1 E. All Medical Cannabis Businesses shall provide to the City a plan for
2 disposal of any unusable medical cannabis or medical cannabis-infused product
3 that is not sold to a patient or primary caregiver in a manner that protects any
4 portion thereof from being possessed or ingested by any person or animal.

5 F. All Medical Cannabis Businesses shall provide to the City a plan for
6 proper ventilation and/or filtration of the Medical Cannabis Business that
7 describes the systems that will be used to prevent any odor of medical cannabis
8 from leaving the premises, as well as all internal ventilation systems used to
9 control the environment for the plants.

10 G. All Medical Cannabis Businesses shall provide to the City a
11 statement from a qualified electrician that the property is capable of handling the
12 projected electrical load, or necessary upgrades that will be performed prior to
13 final inspection of the property.

14 H. All Medical Cannabis Businesses shall provide to the City a
15 description of the point of sale ("POS") software the Medical Cannabis Business
16 will utilize to track inventory and sales of medical marijuana.

17 I. All Medical Cannabis Businesses shall provide to the City a
18 statement signed under penalty of perjury by each owner or manager that they
19 have read, understand, and shall ensure compliance with the terms of this
20 Chapter.

21 J. All Medical Cannabis Businesses shall provide to the City a
22 description of the business Security Plan, including a floorplan with placement of
23 webcams, monitors, door/window protection, and security personnel.

24 K. A Medical Cannabis Business operating as a storefront dispensary
25 (without an accompanying Cultivation Facility attached) is prohibited in any zone
26 that is not commercial, retail, or industrial and if in a commercial, retail, or
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1 industrial zone if prohibited if it does not meet the distance and buffer conditions
2 described in this Chapter.

3 L. Notwithstanding the immunity provisions set forth in this Chapter, a
4 maximum three (3) Medical Cannabis Businesses operating as storefront
5 dispensaries per City district shall be provided limited immunity at the same time
6 and no more than thirty-two (32) Medical Cannabis Businesses operating as
7 storefront dispensaries in the City shall be provided limited immunity at the same
8 time.

9 M. Unless in a zone designated industrial, no Medical Cannabis
10 Business operating as storefront dispensary can be located within 1000 feet of
11 another Medical Cannabis Business.

12 N. Medical Cannabis Businesses operating as Cultivation Facilities and
13 storefront dispensaries that include Cultivation Facilities at the same location are
14 prohibited in any zone not designated industrial and must meet all other
15 conditions, restrictions and limitations, including but not limited to distance,
16 spacing and buffer requirements, set forth in this Chapter, except that Medical
17 Cannabis Businesses located in industrial zones are not subject to the spacing
18 limitation set forth in section 5.91.040(M).

19 O. A Medical Cannabis Business shall not be located within one
20 thousand five hundred (1,500) feet of a public or private high school or
21 Educational Partnership High School ("EPHS") that is operational, or within one
22 thousand (1,000) feet of a public park or a public or private kindergarten,
23 elementary, middle, or junior high school. The distances specified in this
24 subsection shall be determined by the horizontal distance measured in a straight
25 line from the actual property line of the school, park, or other medical cannabis
26 storefront business to the closest actual property line of the lot on which the
27 Medical Cannabis Business is located, without regard to intervening structures.

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1 P. All Medical Cannabis Businesses operating as storefront
2 dispensaries must have a secured and locked medical cannabis dispensary
3 room, one or more private rooms (no security cameras or sound recording
4 equipment shall be placed or operating in private rooms so as to comply with 45
5 C.F.R. §§ 160-164, Privacy and Security provisions of the Health Insurance
6 Portability and Accountability Act of 1996 {HIPAA}, and California's health care
7 privacy laws) solely for consultation on the medical use of cannabis and the
8 needs of the patient, a separate reception area for screening of patients, and a
9 patient waiting area that is secured by a door preventing entry to any area where
10 cannabis is stored or distributed.

11 Q. All Medical Cannabis Businesses shall apply for and obtain a
12 Cannabis Tax Identification Number ("CTIN") from the Department of Finance
13 and shall post the CTIN certificate in a conspicuous place. No more than thirty-
14 two (32) CTIN certificates shall be valid at any time for Medical Cannabis
15 Businesses operating as storefront dispensaries. CTINs shall be issued by the
16 Department of Finance only after a review of compliance with this Chapter by the
17 Medical Cannabis Business applicant and a determination by the Department of
18 Finance that the Medical Cannabis Business is eligible for the limited immunity
19 provided for under this Chapter.

20 R. All Medical Cannabis Businesses shall apply for and obtain a State
21 of California seller's permit and shall post the permit in a conspicuous place.

22 S. A Medical Cannabis Business shall be ventilated and contain odor
23 filters so that the odor of cannabis cannot be detected at the exterior of the
24 Medical Cannabis Business or at any adjoining use or property.

25 T. All Medical Cannabis Businesses shall file City tax reports on a
26 monthly basis to the Department of Finance in accordance with regulations
27 promulgated by it from time to time.

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1 U. All Medical Cannabis Businesses shall pay required local taxes
2 within thirty (30) days of the calendar month during which the taxes were
3 accrued. Failure to pay required local taxes shall be grounds for immediate loss
4 of immunity under this Chapter. Any tax paid to the City shall be paid by check,
5 cashier's check, money order or electronic funds transfer and shall not be paid in
6 cash or currency.

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8 5.91.060 Medical Cannabis Business – Prohibited Activities.

9 A. No marijuana shall be smoked, eaten, or otherwise consumed or
10 ingested within a Medical Cannabis Business, except in a private employee area,
11 for benefit of patient employees who are working more than four (4) hours in a
12 one (1) day period at the Medical Cannabis Business.

13 B. No person, other than a pre-qualified patient, authorized caregiver,
14 licensee, employee, or a contractor shall be in the dispensary room of any
15 Medical Cannabis Business operating as a storefront dispensary. No patient or
16 authorized caregiver shall be allowed entry into the medical cannabis dispensary
17 room without showing their verifiable physician's recommendation and their valid
18 picture ID, including a valid California Driver's License or Department of Motor
19 Vehicle issued identification card.

20 C. Any and all cultivation, production, distribution, possession, storage,
21 display, sales or other distribution of cannabis shall occur only within an enclosed
22 area of a Medical Cannabis Business and shall not be visible from the exterior of
23 the business.

24 D. Medical cannabis physician recommendations shall not be issued on
25 the premises of any Medical Cannabis Business.

26 E. No person who has been convicted of a serious felony involving
27 violence in the ten (10) year period preceding application made under section
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1 5.91.040(D) shall be an Agent in Charge, manager, owner or general manger of
2 any Medical Cannabis Business.

3 F. No Medical Cannabis Business shall be managed by any person
4 other than an Owner, general manager, store manager, Agent in Charge or other
5 individual who has complied with section 5.91.040(D) of this Chapter.

6 G. A Medical Cannabis Business shall be closed to the public, and no
7 sale or other distribution of marijuana shall occur upon the property between the
8 hours of nine o'clock (9:00) p.m. and eight o'clock (8:00) a.m.

9 H. No pesticides or insecticides which are prohibited by federal, state,
10 or local law for fertilization or production of edible produce shall be used on any
11 cannabis cultivated, produced or distributed by a Medical Cannabis Business. A
12 Medical Cannabis Business shall comply with all applicable federal, state, and
13 local law regarding use and disposal of pesticides.

14 I. A Medical Cannabis Business shall not maintain any more marijuana
15 within the property than is permitted under applicable state law and shall
16 maintain current records evidencing the status and number of patients for whom
17 they cultivate or dispense medical cannabis.

18 J. The Agent in Charge of a Medical Cannabis Business shall report to
19 the Department of Finance any planned transfer or change of financial interest,
20 general manager, financier, or Agent in Charge of the Medical Cannabis
21 Business at least thirty (30) days before such transfer takes place. Failure to
22 report transfer in accordance with this subsection will result in loss of the limited
23 immunity provided under this Chapter. No transfer shall be made to an individual
24 ineligible under section 5.91.060(D).

25 K. Any Violation of the Law by any Agent in Charge, manager, general
26 manager, financier, or owner of a Medical Cannabis Business shall be reported
27 to the Department of Finance within ten (10) days of notice to any Agent in
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1 Charge, manager, general manager or financier of any Medical Cannabis
2 Business. Failure to report under this subsection shall be grounds for immediate
3 loss of immunity under this Chapter.

4 L. Reports of all criminal activity or attempts of violation of any law at
5 the Medical Cannabis Business or related thereto shall be reported to the Long
6 Beach Police Department within twenty-four (24) hours of occurrence, if known,
7 or within twelve (12) hours of notice to any Agent in Charge, manager, general
8 manager, owner or financier of the subject Medical Cannabis Business.

9 M. Unless provided for by state law, it shall be unlawful for any person
10 to transport medical marijuana, except as specifically provided for in the Act,
11 Program or Guidelines, unless the medical marijuana being transported meets
12 the following requirements:

13 (1) All medical marijuana-infused products are hand-packaged, sealed
14 and labeled as provided in this Chapter and the products stored in closed
15 containers that are labeled as provided in this section;

16 (2) All medical cannabis in a usable form for medicinal use is packaged
17 and stored in closed containers that are labeled as provided in this section
18 and are packaged for delivery; and

19 (3) Each container used to transport medical marijuana is labeled with
20 the amount of medical marijuana or medical marijuana-infused products in
21 the container. The label shall include the name and address of the Medical
22 Cannabis Business that the medical cannabis is being transported from or
23 the name and address of the patient that the medical cannabis is being
24 delivered to.

25 N. Unless specifically provided for by state law, medical cannabis may
26 be transported only:

1 (1) From a medical cannabis cultivation facility anywhere in the State of
2 California that is operated by members of the dispensary or collective to a
3 Medical Cannabis Business operating as a storefront dispensary by the
4 same entity or with common interest between members; or

5 (2) From a Medical Cannabis Business to a residence or workplace of a
6 collective member/patient/authorized caregiver of that collective and then
7 only when transported by employees of the Medical Cannabis Business
8 who are bonded by a qualified bonding agency and covered by workers
9 compensation and commercial automobile liability insurance.

10 O. A Medical Cannabis Business may not advertise in a manner that is
11 inconsistent with the medicinal use of cannabis. A Medical Cannabis Business
12 may not advertise in a manner that is misleading, deceptive, false, or is designed
13 to appeal to minors. Advertisement that promotes medical cannabis for
14 recreational or any use other than for medicinal purposes shall be a violation of
15 this Chapter and shall be immediate grounds for loss of immunity under this
16 Chapter.

17 P. Except as otherwise provided in this paragraph, it shall be unlawful
18 for any person permitted under this Chapter or any other person to advertise any
19 medical cannabis or medical cannabis-infused product anywhere in the city
20 where the advertisement is in plain view of, or in a place open to the general
21 public, including advertising utilizing any of the following media: illuminated signs,
22 signs incorporating green crosses or other marijuana related symbol, any
23 billboard or other outdoor general advertising device as defined by the zoning
24 regulations of the City; any sign mounted on a vehicle; any hand-held or other
25 portable sign; or any handbill, leaflet or flier directly handed to any person in a
26 public place, left upon a motor vehicle, or posted upon any public property. The
27 prohibition set forth in this paragraph shall not apply to:
28

1 (1) Any sign located on the same lot as a medical cannabis
2 business which exists solely for the purpose of identifying the location of
3 the Medical Cannabis Business and which otherwise complies with this
4 Chapter and any other applicable city laws and regulations;

5 (2) Any advertisement contained within a newspaper, magazine, or
6 other periodical of general circulation within the City or on the Internet that
7 complies with subsection 5.91.060(O); or

8 (3) Advertising which is purely incidental to sponsorship of a charitable
9 event by a Medical Cannabis Business or a medical marijuana-infused
10 products manufacturer.

11 M. The owner, manager, or Agent in Charge is required to respond by
12 phone or email within twenty-four business hours of contact by a city official
13 concerning their Medical Cannabis Business at the phone number or email
14 address provided to the City as the contact for that person. Each twenty-four (24)
15 hour period during which an owner or manager does not respond to the city
16 official shall be considered a separate violation.

17 N. No Medical Cannabis Business may produce or distribute any form
18 of synthetic cannabis.

19 O. No Medical Cannabis Business may use metals, butane, or
20 propane to process marijuana.

21 P. Dispensing of medical cannabis that is not packaged in a manner
22 which clearly shows the name of the Medical Cannabis Business that is providing
23 the cannabis is prohibited.

24 Q. No Medical Cannabis Business shall operate for profit. Cash and in-
25 kind contributions, reimbursements, and reasonable compensation (as per the
26 Guidelines) provided by patients toward the Medical Cannabis Business
27 expenses to grow, cultivate, and provide medical cannabis shall not be prohibited
28

1 when made in strict compliance with State Law. All such cash and in-kind
2 amounts and items shall be accounted for by the Medical Cannabis Business
3 that must follow generally accepted accounting principles and methods. Failure
4 to follow generally accepted accounting principles and methods by a Medical
5 Cannabis Business is grounds for immediate loss of immunity under this
6 Chapter.

7 R. No medical cannabis shall be distributed to any person that has not
8 had a representative sample of at least one (1) gram per five (5) pounds tested
9 for levels of tetrahydrocannabinol, cannabinoids, pesticides, chemicals and other
10 organic or non-organic substances in accordance with testing guidelines that
11 shall be promulgated by the Long Beach Department of Public Health.

12
13 5.91.070 Inspection Authority.

14 Upon issuance of an Inspection Warrant as defined in § 1822.50 of the Ca.
15 Code of Civil Procedure, City representatives may enter and inspect the Property
16 of every Medical Cannabis Business between the hours of 10:00 A.M. and 9:00
17 P.M., to ensure compliance and enforcement of the provisions of this Chapter.
18 The Long Beach Department of Public Health shall be responsible for conducting
19 inspections under this section and shall be notified of any inspection or action
20 taken in respect to any Medical Cannabis Business by other departments.

21 A. The inspection and copying of private medical records shall be made
22 available to the Police Department or any other state/municipal law enforcement
23 agency only pursuant to a properly executed search warrant, subpoena, or court
24 order and only when such use and disclosure by the City is in full compliance
25 with the Privacy and Security provisions of the Health Insurance Portability and
26 Accountability Act of 1996 (HIPAA), as codified at 42 U.S.C. § 1320d, and as
27 amended in 2009 by the Health Information Technology for Clinical and
28

1 Economic Health Act (“HITECH”), as codified at 42 U.S.C. § 17901, *et seq.*
2 (specifically subtitle D of the American Recovery and Reinvestment Act of 2009,
3 the “ARRA”), and under the regulations promulgated by the Secretary of Health
4 and Human Services found in 45 C.F.R. §§ 160-164 and updated from time to
5 time.

6 B. It is unlawful for any Property owner, landlord, lessee, Medical
7 Cannabis Business member or Management Member or any other person having
8 any responsibility over the operation of the Medical Cannabis Business to refuse
9 to allow, impede, obstruct or interfere with an inspection.

10 C. No information or records maintained by the City as a result of an
11 inspection conducted pursuant to this Section or otherwise provided by a Medical
12 Cannabis Business, Agents in Charge, Managing Members, members, financiers
13 or owners to the City under this Chapter or as a result of any investigation shall
14 be provided to the federal government unless a court of competent jurisdiction
15 issues an order requiring such disclosure.

16
17 5.91.080 Invalid Physician Recommendations.

18 A. No Medical Cannabis Business shall distribute medical cannabis to a
19 patient or patient caregiver whose medical cannabis physician recommendation
20 was issued by a physician who has been designated as an Invalid
21 Recommendation Provider by the Long Beach Department of Public Health.

22 B. All Medical Cannabis Businesses shall check, upon presentation of
23 a patient or authorized caregiver member’s physician recommendation, whether
24 the physician who provided the recommendation is listed on the Invalid
25 Recommendation Provider List (“IRPL”) that shall be maintained electronically by
26 the Long Beach Department of Public Health.

27 C. The Long Beach Department of Public Health shall, when a
28

1 complaint is made that a physician is issuing medical marijuana
2 recommendations to patients without sufficient examination or grounds to do so,
3 conduct an investigation of the physician's recommendation practices pursuant to
4 the review policy for such investigations that shall be promulgated by the
5 Department of Public Health ("DPH") from time to time. Following initial
6 investigation made by DPH, if it is determined there is probable cause to believe
7 the physician is issuing recommendations to patients who do not suffer from
8 conditions enumerated in H&S §§ 11362.7(h), (1)-(11), a hearing will be set with
9 a neutral administrative hearing officer presiding and shall be conducted in
10 accordance with the hearing provisions set forth in this Code. Upon final
11 determination by a hearing officer (and exhaustion of any appeals taken in
12 accordance with this Code or state law), a finding by the hearing officer that the
13 physician is issuing recommendations to patients who do not suffer from the
14 conditions enumerated in H&S §§ 11362.7(h), (1)-(11) that is made by the
15 hearing officer shall result in the physician's name being recorded by the DPH
16 onto the IRPL. Upon any change to the IRPL, the DPH shall cause the updated
17 IRPL to be made available within ten (10) days to all Medical Cannabis
18 Businesses.

19 D. After a period of six (6) months following reporting of a physician on
20 the IRPL, the reported physician may apply to the DPH for removal from the
21 IRPL. The DPH shall promptly conduct an investigation and notify the physician
22 of its decision. Should the DPH decide the physician remain on the IRPL, the
23 physician may appeal in accordance with the hearing provisions in this Code.
24 The DPH may assess a fee up to \$1,500.00 to a physician to be paid in advance
25 for any application to be considered under this subsection.

26 E. Any Medical Cannabis Business that distributes marijuana to a
27 person with a recommendation from a physician listed on the IRPL shall be
28

1 subject to immediate loss of immunity under this Chapter and subject to the
2 provisions of section 5.91.100.

3 F. The DPH shall handle all public complaints about Medical Cannabis
4 Businesses and, after investigating any specific complaint, determine, in
5 accordance with regulations it shall promulgate and update from time to time,
6 take necessary action or refer action to another City agency.

7
8 5.91.100 Violation and enforcement.

9 A. Any person violating any provision of this Chapter or knowingly or
10 intentionally misrepresenting any material fact under this Chapter, shall be
11 deemed guilty of a misdemeanor punishable by a fine of not more than one
12 thousand dollars (\$1,000) or by imprisonment for not more than twelve (12)
13 months, or by both such fine and imprisonment.

14 B. Any person who engages in any Medical Cannabis Business
15 operations without first obtaining a CTIN as specified in subsection 5.91.040(Q),
16 or after issuance of a CTIN has been denied, suspended or revoked, shall be
17 guilty of a misdemeanor.

18 C. As a nuisance per se, as similarly described for all businesses in the
19 LBMC, any violation of this Chapter shall be subject to injunctive relief,
20 revocation of the CTIN, disgorgement and payment to the City of Long Beach
21 any and all monies unlawfully obtained, costs of abatement, costs of
22 investigation, attorney fees, and any other relief or remedy available at law or
23 equity. The City may also pursue any and all remedies and actions available and
24 applicable under local and state law for any violations related to the operation of
25 a Medical Cannabis Business that does not meet the immunity conditions and
26 requirements set forth in this Chapter.

27
28

1 D. Any violation of the terms and conditions of this Chapter, or any
2 knowing violation of applicable local or state regulations and laws shall be
3 grounds for immediate loss of immunity under this Chapter.
4

5 5.91.120 Operative date.

6 This ordinance will become effective ninety (90) days following its passage
7 and adoption. The Department of Finance shall immediately accept CTIN
8 applications and other documentation required by this Chapter immediately upon
9 its passage. The limited immunity provisions of this Chapter shall become
10 effective immediately upon passage and adoption.
11

12 5.91.130 Severability.

13 If any provision of this Chapter, or the application thereof to any person or
14 circumstance, is held invalid, that invalidity shall not affect any other provision or
15 application of this Chapter that can be given effect without the invalid provision or
16 application; and to this end, the provisions or applications of this Chapter are
17 severable.
18

19
20 5.91.140 Establishment of Medical Cannabis Task Force.

21 A. A Long Beach Medical Cannabis Task Force is hereby established
22 and shall consist of nine (9) members. Appointments to the Task Force shall be
23 made and vacancies on the Task Force shall be filled by the Mayor and City
24 Council in accordance with the provisions in Chapter 2.18 of this Code. Services
25 of the members of the Task Force shall be voluntary and members will serve
26 without compensation.
27
28

1 B. All members of the Task Force shall be residents of the City. The
2 Task Force shall be comprised of the following members:

3 (1) Three Task Force members shall be representatives from three
4 separate Medical Cannabis Businesses operating in the City;

5 (2) Three Task Force members shall be representatives of
6 recognized neighborhood organizations which have at least one Medical
7 Cannabis Business operating within its boundaries; and

8 (3) Three Task Force members shall be representatives of local
9 patient advocacy organization(s) with backgrounds in working to protect
10 the interests of medical marijuana patients.

11 C. The Medical Marijuana Task Force shall have the power and duty to:

12 (1) Recommend to the City operational and safety standards for Medical
13 Cannabis Businesses operating in the City;

14 (2) Develop and make recommendations for a mediation process to be
15 used by operators of medical cannabis dispensaries, patients, and
16 neighbors of dispensaries to address community concerns and nuisance
17 issues and resolve conflicts and disputes.

18 D. Sunset provision.

19 The Medical Marijuana Task Force shall terminate by operation of law on
20 December 31, 2017, and after that date, the City Attorney shall cause this section
21 to be removed from the Code.

22
23 SECTION 2. The City Clerk shall certify to the passage of this Ordinance
24 by the City Council and cause it to be posted in three conspicuous places in the
25 City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is
26 approved by the Mayor. All winning applications shall be publically posted on the
27 Long Beach City website, with personal and financial information redacted.

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