



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

**ORD-21**

CHARLES PARKIN  
City Attorney

MICHAEL J. MAIS  
Assistant City Attorney

MONTE H. MACHIT  
Assistant City Attorney

PRINCIPAL DEPUTIES

Gary J. Anderson  
Charles M. Gale  
Anne C. Lattime

DEPUTIES

C. Geoffrey Allred  
Richard F. Anthony  
William R. Baerg  
LaTasha N. Corry  
Haleh R. Jenkins  
Monica J. Kilaita  
Nicholas J. Masero  
Dawn A. McIntosh  
Barbara J. McTygue  
Lauren E. Misajon  
Katrina R. Pickett  
Howard D. Russell  
Arturo D. Sanchez  
Victoria A. Silcox  
Linda T. Vu  
Amy R. Webber  
Theodore B. Zinger

December 19, 2017

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

**RECOMMENDATION:**

Recommendation to receive supporting documentation into the record, conclude the hearing, declare ordinance relating to the temporary limitation (moratorium) on the issuance of any permit, entitlement, license, approval, operation, or activity relating to adult use non-medical (recreational) commercial cannabis activity in the City read, adopted as read, and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof; and declaring this ordinance shall take effect immediately. (Citywide)

**DISCUSSION**

On November 14, 2017, the City Council adopted a minute order pursuant to an agenda request establishing a temporary 180-day limitation on the issuance of any permit, entitlement, license, approval, operation, or activity relating to adult use non-medical (i.e., recreational) commercial cannabis activity in the City.

The attached ordinance prepared for Council's consideration establishes a 180-day moratorium ("hold") period. During this time, the City Manager, Financial Management and the City Attorney's office will craft a "best practices" document related to the regulation of commercial recreational marijuana in the City. This document would serve as a framework for a regulatory recreational marijuana ordinance that would be presented to the Council for its consideration.

During the moratorium hold period, it would be illegal for any person or entity in the City to engage in commercial recreational marijuana business activities. This temporary prohibition would also prohibit any business legally operating, or preparing to operate, a medical marijuana facility in accordance with LBMC 5.90 ("Medical Marijuana Businesses") from engaging in recreational marijuana business activities during the time the moratorium is in effect.

TIMING CONSIDERATIONS

If the ordinance is not adopted on this date, the temporary interim moratorium would expire and recreational marijuana businesses may attempt to locate in the City without appropriate regulation.

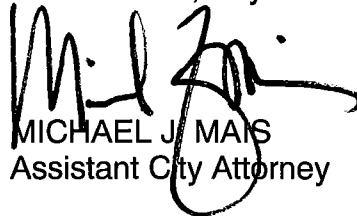
SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

CHARLES PARKIN, City Attorney

By

  
MICHAEL J. MAIS  
Assistant City Attorney

MJM:kjm

A17-03409

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ORDINANCE NO.

AN INTERIM ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF LONG BEACH ADOPTED AS AN  
URGENCY MEASURE ESTABLISHING A TEMPORARY  
ONE HUNDRED AND EIGHTY (180) DAY LIMITATION ON  
THE ISSUANCE OF ANY PERMIT, ENTITLEMENT,  
LICENSE, APPROVAL, OPERATION, OR ACTIVITY  
RELATING TO ADULT USE NON-MEDICAL COMMERCIAL  
CANNABIS ACTIVITY IN THE CITY; AND DECLARING  
THAT THIS ORDINANCE SHALL TAKE EFFECT  
IMMEDIATELY

WHEREAS, the City of Long Beach (the "City") is a municipal corporation  
and chartered city, duly organized under the Constitution and the laws of the state of  
California;

WHEREAS, on October 9, 2015, Governor Brown signed Assembly Bill No.  
243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known  
as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA  
established a State licensing scheme for commercial medical cannabis uses, while  
protecting local control by requiring that all such businesses have a local license or  
permit to operate in addition to a State license. The MCRSA allowed the cities to  
completely prohibit commercial medical cannabis activities, if cities chose to do so;

WHEREAS, on November 8, 2016, California voters approved the Control,  
Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA added Division 10 to  
the California Business and Professions Code, sections 26000, *et seq.*, which grants  
State agencies the authority to create, issue, renew, discipline, suspend, or revoke  
licenses for cannabis businesses. The AUMA provides that the State shall begin issuing

1 licenses to cannabis businesses under Division 10 of the California Business and  
2 Professions Code by January 1, 2018. California Business and Professions Code  
3 section 26055(d) provides that a State licensing authority shall not approve an application  
4 for a State license for commercial non-medical cannabis activity if approval of the State  
5 license will violate the provisions of any local ordinance;

6 WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94  
7 which repealed the MCRSA, including certain provisions of the MCRSA in the licensing  
8 provisions of the AUMA, and created a single regulatory scheme for both medical and  
9 non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and  
10 Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the  
11 AUMA that granted local jurisdictions control over whether commercial cannabis activity  
12 can occur in a particular jurisdiction. Specifically, California Business and Professions  
13 Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or  
14 limit the authority of a local jurisdiction to adopt and enforce local ordinances that  
15 completely prohibit the establishment or operation of one or more businesses licensed  
16 under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that  
17 a State licensing authority shall not approve an application for a State license for a  
18 business to engage in commercial cannabis activity if approval of the State License will  
19 violate the provisions of any local ordinance or regulation. The MAUCRSA requires that  
20 a State licensing authority begin issuing licenses to marijuana businesses beginning  
21 January 1, 2018. The MAUCRSA also requires that a city provide a copy of its ordinance  
22 regarding commercial cannabis activity to the Bureau of Cannabis Control;

23 WHEREAS, on November 6, 2016, the citizens of Long Beach voted to  
24 approve a regulatory ordinance making it legal in certain specified circumstances to own  
25 and operate a medical marijuana business in the City of Long Beach with a City issued  
26 permit and further requires medical marijuana businesses to be licensed by the State  
27 when the State issues licenses beginning in January 2018;

28 WHEREAS, on September 28, 2017, the City of Long Beach held a public

1 lottery to determine which Medical Marijuana Dispensary Business License Applications  
2 were eligible to proceed in an application process, resulting in a total of 32 medical  
3 marijuana dispensary licenses that could be issued in the City;

4 WHEREAS, on November 14, 2017, the City Council voted to adopt a  
5 minute order requesting the City Attorney to prepare a formal draft ordinance establishing  
6 a temporary one hundred and eighty (180) day ban on adult use commercial recreational  
7 marijuana ("cannabis") businesses and related activities in the City until such time as the  
8 City Council considers and adopts or rejects a regulatory ordinance relating to the  
9 licensing, cultivation, manufacture, distribution, delivery, and laboratory testing of such  
10 adult use recreational marijuana;

11 WHEREAS, the City does not currently have any express regulatory  
12 provisions in place prohibiting or regulating non-medical marijuana dispensaries, non-  
13 medical marijuana commercial operations or businesses, or the cultivation or processing  
14 of non-medical marijuana, and the City needs sufficient time to consider and review  
15 policy considerations and potential impacts to land uses and time to enact  
16 comprehensive regulations related to non-medical marijuana (i.e., recreational) to  
17 preserve the health, safety and welfare of the City's residents and businesses.

18  
19 NOW, THEREFORE, The City Council of the City of Long Beach ordains as  
20 follows:

21 Section 1. The above recitals and findings are true and correct and are  
22 hereby adopted as "findings" and the City Council further finds this Ordinance is  
23 necessary for the immediate preservation of the public health, safety and welfare.

24 Section 2. Findings and Declaration of Urgency. The City Council of the  
25 City of Long Beach hereby finds and declares that there is a need to enact an Urgency  
26 Ordinance as permitted by City Charter Section 211 establishing an interim use  
27 moratorium (i.e., temporary ban) on all new or illegally existing non-medical commercial  
28 cannabis activities in the City, subject to the findings, provisions and conditions contained

1 in this Ordinance. If new, or already illegally existing, non-medical commercial cannabis  
2 businesses or activities are permitted to exist in the City during the interim study period it  
3 is likely to create a burden on scarce City resources, including public safety resources,  
4 thereby reducing the quality of life within the City's neighborhoods. Based on the  
5 foregoing, the City Council does hereby declare that this Urgency Ordinance is necessary  
6 to protect the public health, safety, and welfare while the City further studies this  
7 complicated issue and considers the adoption or rejection of a regulatory ordinance  
8 governing non-medical commercial cannabis businesses or activities in the City.

9           Section 3. Adoption as Urgency Interim Ordinance. This ordinance is  
10 adopted as an urgency ordinance pursuant to the provisions of Section 211 of the  
11 Charter of the City of Long Beach, and shall be effective immediately upon its adoption.  
12 Based on the findings set forth herein, the City Council finds and determines that the  
13 adoption of this ordinance as an urgency ordinance is necessary for the immediate  
14 preservation of the public peace, health or safety pursuant to the requirements of Charter  
15 Section 211, and is necessary to protect the public safety, health, and welfare of the  
16 residents and businesses residing and operating within the City.

17           Section 4. Temporary Moratorium. The City Council hereby declares a  
18 moratorium commencing on the effective date of this ordinance and continuing for a  
19 period of one hundred and eighty (180) days, through and including, June 18, 2018.  
20 During the period of the moratorium the City shall not accept or process any application  
21 or permit whatsoever that would lead to the entitlement or establishment of a non-medical  
22 commercial cannabis business or activity in the City; nor shall any such activity exist or  
23 operate in the City during the interim period. For the purposes of this Ordinance, the  
24 term "non-medical commercial cannabis businesses or activity" shall include, but not be  
25 limited to, whether or not for profit, the cultivation, possession, manufacture, distribution,  
26 processing, storing, laboratory testing, packaging, labeling, transportation, delivery or  
27 sale of non-medical (i.e., "recreational) cannabis or non-medical cannabis product,  
28 including concentrated non-medical cannabis or edible non-medical cannabis products

1 and includes the activities of any business licensed by the State or other government  
2 entity under the provisions of MAUCRSA, including those businesses or operations  
3 authorized by Division 10 of the California Business and Professions Code, or any other  
4 provision of State law that regulates the licensing of non-medical cannabis businesses or  
5 products. During the interim study period, a property owner shall not rent to, lease to, or  
6 otherwise permit or allow any person or business to engage in any non-medical  
7 commercial cannabis business or activity at the real property, nor shall the property  
8 owner engage in any such non-medical commercial cannabis business or activity on the  
9 real property.

10 Section 5. Exemptions. This temporary moratorium shall not apply to  
11 any activity or business regulated, or lawfully operating pursuant to, the provisions of  
12 Chapter 5.90 of the Municipal Code, however, this exemption explicitly does not permit  
13 any such business to engage in any non-medical commercial cannabis business or  
14 activity whatsoever during the interim study period.

15 Section 6. Studies. City staff and the City Attorney's office shall  
16 commence or continue any studies they may deem necessary and appropriate to make a  
17 recommendation to the City Council regarding the structuring of necessary regulatory  
18 controls over the location and operation of non-medical commercial cannabis business or  
19 activities in the City and endeavor to draft a regulatory ordinance that will adequately  
20 serve the City and its residents and businesses.

21 Section 7. CEQA. The City Council hereby finds, in the exercise of its  
22 independent judgment and analysis, that this ordinance is exempt from the California  
23 Environmental Quality Act of 1970 ("CEQA"), as amended, because it can be seen with  
24 certainty that this urgency ordinance has no likelihood of causing a significant negative  
25 effect on the environment and accordingly both the City Council's action of adopting this  
26 ordinance and the effects derivative from that adoption are exempt from the application of  
27 CEQA, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 Cal. Code  
28 Regs. § 15061(b)(3)). The City Council further finds, in the exercise of its independent

1 judgment and analysis, that the adoption of this urgency ordinance is exempt from  
2 CEQA, pursuant to Section 15060(c)(2) of the State CEQA Guidelines (14 Cal. Code  
3 Regs. § 15060(c)(2), because it will not result in a direct or reasonably foreseeable  
4 indirect physical change in the environment. These findings are premised on the fact that  
5 the adoption of this urgency interim ordinance will maintain the current environmental  
6 conditions arising from the current regulatory structure as adopted by the City without  
7 change or alteration

8           Section 8. Severability. If any section, subsection, subdivision,  
9 sentence, clause, phrase, or portion of this ordinance or the application thereof to any  
10 person or place, is for any reason held to be invalid or unconstitutional by the decision of  
11 any court of competent jurisdiction, such decision shall not affect the validity of the  
12 remainder of this ordinance. The City Council hereby declares that it would have  
13 adopted this ordinance, and each section, subsection, subdivision, sentence, clause,  
14 phrase, or portion thereof, irrespective of the fact that any one or more sections,  
15 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared  
16 invalid or unconstitutional.

17           Section 9. This ordinance is an emergency ordinance duly adopted by  
18 the City Council on December 19, 2017 by a vote of at least five (5) of its members and  
19 shall take effect immediately. The City Clerk shall certify to a separate roll call and vote  
20 on the question of the emergency of this ordinance and to its passage by the vote of five  
21 members of the City Council of the City of Long Beach, and cause the same to be posted  
22 in three conspicuous places in the City of Long Beach.

23           Section 10. This ordinance shall also be adopted by the City Council as a  
24 regular ordinance, to the end that in the event of any defect or invalidity in connection  
25 with the adoption of this ordinance as an emergency ordinance, the same shall,  
26 nevertheless, be and become effective on the thirty-first day after it is approved by the  
27 Mayor.

28           Section 11. The City Clerk shall certify to the passage of this ordinance by



OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 the City Council of the City of Long Beach and shall cause the same to be posted in three  
2 (3) conspicuous places in the City of Long Beach.

3

4 I hereby certify that on a separate roll call and vote which was taken by the  
5 City Council of the City of Long Beach upon the question of emergency of this ordinance  
6 at its meeting of \_\_\_\_\_, 20\_\_\_\_, the ordinance was declared to be an  
7 emergency by the following vote:

8 Ayes: Councilmembers: \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 Noes: Councilmembers: \_\_\_\_\_

12 \_\_\_\_\_

13 Absent: Councilmembers: \_\_\_\_\_

14 \_\_\_\_\_

15

16 I further certify that thereafter, at the same meeting, upon a roll call and  
17 vote on adoption of the ordinance, it was adopted by the City Council of the City of Long  
18 Beach by the following vote:

19 Ayes: Councilmembers: \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 Noes: Councilmembers: \_\_\_\_\_

23 \_\_\_\_\_

24 Absent: Councilmembers: \_\_\_\_\_

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I further hereby certify that the foregoing ordinance was adopted on final reading by the City Council of the City of Long Beach at its meeting of

\_\_\_\_\_, 20\_\_\_\_, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor

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Long Beach, CA 90802-4664