



OFFICE OF THE CITY ATTORNEY
Long Beach, California

H-2

ROBERT E. SHANNON
City Attorney

December 14, 2010

HEATHER A. MAHOOD
Chief Assistant City Attorney

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to receive supporting documentation into the record, conclude the hearing and declare ordinance amending the Long Beach Municipal Code by amending and restating Chapter 5.87 relating to Medical Marijuana Collectives read the first time and laid over to the next regular meeting of the City Council for final reading; and

Declare ordinance establishing a temporary moratorium on the issuance of permits, entitlements, licenses, and approvals regarding medical marijuana collectives read the first time and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof and declaring that this ordinance shall take effect immediately. (Citywide)

DISCUSSION

Pursuant to the request of the City Council at its meeting of November 16, 2010, this office has prepared the attached amended ordinance relating to Medical Marijuana Collectives. If adopted, the ordinance would amend Chapter 5.87 of the Municipal Code which was adopted by this Council in March 2010. The amended ordinance would:

1. Create an additional "buffer zone" so that a Collective could not locate within 1,000 feet of a public park. The term "Park" is defined to include those areas of the City that are zoned for park use as well as all areas that have been designated or dedicated for park use. (The current regulations prohibit Collectives from locating within 1500 feet of a public or private high school, 1,000 feet of public or private kindergarten, elementary, middle or junior high school, or within 1,000 feet of another legally established Collective.) The amended ordinance also clarifies that, for the purpose of the Collective regulations, an Educational Partnership High School ("EPHS") is considered a public high school.

2. Create a 45-day comment period whereby members of the public and other interested persons could submit comments to the City regarding the propriety of issuing a Medical Marijuana Collective Permit for a particular location. Following the 45-day comment period, a hearing would be held by the City Council within 60 days where the Council would determine if a permit will be issued. The amended ordinance also

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Randall C. Fudge
Charles M. Gale
Barbara J. McTigue
Barry M. Meyers
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Howard D. Russell
Tiffani L. Shin
Linda Trang
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establishes noticing requirements relating to the 45-day comment period, the City Council hearing, and the issuance of a permit. The new noticing requirements parallel those currently contained in the City's Zoning Code.

3. Establish a requirement that each Medical Marijuana Collective install and maintain a video surveillance system that would allow the Police Department to monitor the exterior grounds of a collective for the purpose of detecting criminal or nuisance activity occurring at the premises.

4. Limit the operations of a collective to the hours between 9:00 A.M. and 7:00 P.M.

5. Require each collective to prepare and submit an annual audited report prepared by a CPA that would detail, among other things, the revenue and operational costs and expenditures of the Collective for the calendar year.

In addition to the above, the amended ordinance also clarifies that it is illegal to operate a Collective in the City without first obtaining a valid Medical Marijuana Collective Permit and, likewise, clarifies that Collectives must adhere to the City's zoning regulations regarding parking and signage requirements. The amended ordinance would also require a permitted Collective to comply with the on-site cultivation requirements within 120 days of permit issuance, and would authorize appropriate City staff to develop fair and reasonable regulations in order to implement the Medical Marijuana Collective ordinance.

Also provided for Council's consideration is an ordinance that would implement a one (1) year moratorium that would prohibit City staff from accepting any new applications for a Medical Marijuana Collective permit. The moratorium would not apply to applications currently in the "pipeline" unless the property is located within an established buffer zone. During the moratorium period staff will be better able to study the direct and indirect effects of legally permitted collectives operating in the City. At the end of the one year moratorium period further recommendations will be made regarding any need to revise the City's current regulatory structure related to medical marijuana.

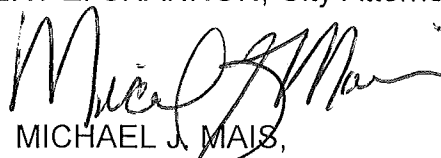
SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By


MICHAEL J. MAIS,
Assistant City Attorney

ORDINANCE NO.

AN INTERIM ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LONG BEACH ADOPTED AS AN
URGENCY MEASURE ESTABLISHING A TEMPORARY
MORATORIUM ON THE ISSUANCE OF PERMITS,
ENTITLEMENTS, LICENSES, AND APPROVALS
REGARDING MEDICAL MARIJUANA COLLECTIVES; AND
DECLARING THAT THIS ORDINANCE SHALL TAKE
EFFECT IMMEDIATELY

WHEREAS, in 1996, the voters of the State of California approved
Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq.,
and entitled, the *Compassionate Use Act of 1996* ("the Act"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in
need of marijuana for medical purposes to obtain and use it under limited, specified
circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify
the scope of the Act and to allow cities and counties to adopt and enforce rules and
regulations consistent with SB 420 and the Act; and

WHEREAS, as a result of Proposition 215, individuals have established
medical marijuana dispensaries in various cities in California, including Long Beach;

WHEREAS, on March 23, 2010, the City Council of the City of Long Beach
adopted Ordinance No. ORD-10-0007, adding Chapter 5.87 to the Long Beach Municipal
Code to implement the State Compassionate Use Act and State Medical Marijuana
Program Act;

WHEREAS, between June 1, 2010 and June 18, 2010, the City accepted
applications from various individuals and entities seeking permits pursuant to Chapter

1 5.87, to operate medical marijuana collectives and cultivation sites in the City;

2 WHEREAS, on September 20, 2010, the City conducted a lottery involving
3 medical marijuana permit applicants which resulted in thirty-seven (37) successful lottery
4 winners, which included both cultivation and dispensary sites located throughout the City;

5 WHEREAS, on November 16, 2010, the City Council requested the City
6 Attorney's office to prepare, for Council's consideration, amendments to Chapter 5.87
7 due in part to concerns expressed by citizens regarding the number of potential collective
8 sites in the City, and their proximity to sensitive areas such as public parks.

9 WHEREAS, on December 14, 2010, the City Council did consider the
10 proposed amendments to Chapter 5.87, and did vote to adopt said amendments in order
11 to address community concerns, and to better protect the health, safety and welfare of
12 the citizens of the City of Long Beach, including those individuals frequenting medical
13 marijuana collectives for their medical marijuana needs;

14 WHEREAS, since the adoption of Chapter 5.87 in March of 2010,
15 community and statewide concerns have been expressed regarding the proliferation of
16 medical marijuana collective sites, and the potential negative secondary effects of such
17 sites, including the potential for an increase in crime and other nuisance related activities;

18 WHEREAS, the City desires to continue to process the applications of the
19 successful lottery winners mentioned above (other than those successful lottery winners
20 who will, or may, be disqualified due to the adopted amendments to Chapter 5.87);

21 WHEREAS, the City likewise desires to implement a moratorium against
22 the acceptance or processing of additional new medical marijuana collective applications
23 for a period of one year, in order to better study and evaluate the actual and potential
24 secondary impacts of said facilities on the community upon the public health, safety and
25 welfare.

26 NOW, THEREFORE, The City Council of the City of Long Beach ordains as
27 follows:

28 Section 1. The above recitals and findings are true and correct.

1 Section 2. Findings and Declaration of Urgency. The City Council of the
2 City of Long Beach hereby finds and declares that there is a need to enact an Urgency
3 Ordinance as permitted by City Charter Section 211 establishing a moratorium on all new
4 medical marijuana collective applications, on an interim basis, subject to the findings and
5 conditions contained in this Ordinance. If additional new medical marijuana collectives
6 are allowed to apply and proceed without appropriate review and study of location,
7 operational criteria and standards, the additional collectives could have a potential
8 serious adverse effect on neighborhoods that would present a clear and immediate
9 danger to the public's health, safety and welfare. The City finds that if the establishment
10 or development of additional medical marijuana collectives were allowed to proceed while
11 the City is studying the actual and possible secondary negative effects of those
12 collectives that have already applied for, and may receive, a medical marijuana collective
13 permit, it may result in a significant irreversible change to neighborhoods and community
14 character. Based on the foregoing, the City Council does hereby declare that this
15 Urgency Ordinance is necessary to protect the public health, safety, and welfare while
16 the City further studies this complicated issue and considers potential further revisions to
17 Chapter 5.87 related to the regulation of medical marijuana collectives.

18 Section 3. Adoption as Urgency Interim Ordinance. This ordinance is
19 adopted as an urgency ordinance pursuant to the provisions of Section 211 of the
20 Charter of the City of Long Beach, and shall be effective immediately upon its adoption.
21 Based on the findings set forth herein, the City Council finds and determines that the
22 adoption of this ordinance as an urgency ordinance is necessary for the immediate
23 preservation of the public peace, health or safety pursuant to the requirements of Charter
24 Section 211, and is necessary to protect the public safety, health, and welfare of the
25 residents and businesses residing and operating within the City.

26 Section 4. Temporary Moratorium. The City Council hereby declares a
27 moratorium commencing on the effective date of this ordinance and continuing for a
28 period of one year, through and including December 14, 2011. During the period of the

1 moratorium the City shall not accept or process any new application or permit whatsoever
2 that would lead to the entitlement or establishment of a Medical Marijuana Collective as
3 that term is currently defined in Chapter 5.87 of the Long Beach Municipal Code.

4 Section 5. Exemptions. This temporary moratorium shall not prohibit the
5 City from continuing to process any application for a medical marijuana collective permit
6 for any medical marijuana collective that was a winner at the City's September 20, 2010
7 lottery, unless said lottery winner's place of operation ("Property" as defined in Chapter
8 5.87) is located within a designated buffer zone as described in Chapter 5.87 or in any
9 amendment to Chapter 5.87.

10 Section 6. Studies. City staff shall promptly commence or continue any
11 studies they may deem necessary and appropriate in order to make a recommendation to
12 the City Council regarding the further structuring of necessary regulatory controls over
13 the location and operation of medical marijuana collectives in the City to cause such uses
14 to be beneficial uses, rather than uses that are detrimental to or which may cause crime
15 or nuisance activities to occur within the City.

16 Section 7. CEQA. The City Council hereby finds, in the exercise of its
17 independent judgment and analysis, that this ordinance is exempt from the California
18 Environmental Quality Act of 1970 ("CEQA"), as amended, because it can be seen with
19 certainty that this urgency ordinance has no likelihood of causing a significant negative
20 effect on the environment and accordingly both the City Council's action of adopting this
21 ordinance and the effects derivative from that adoption are exempt from the application of
22 CEQA, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 Cal. Code
23 Regs. § 15061(b)(3)). The City Council further finds, in the exercise of its independent
24 judgment and analysis, that the adoption of this urgency ordinance is exempt from
25 CEQA, pursuant to Section 15060(c)(2) of the State CEQA Guidelines (14 Cal. Code
26 Regs. § 15060(c)(2), because it will not result in a direct or reasonably foreseeable
27 indirect physical change in the environment. These findings are premised on the fact that
28 the adoption of this urgency interim ordinance will maintain the current environmental

conditions arising from the current regulatory structure as adopted by the City without change or alteration

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

Section 9. This ordinance is an emergency ordinance duly adopted by the City Council on December 14, 2010, by a vote of at least five (5) of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by the vote of five members of the City Council of the City of Long Beach, and cause the same to be posted in three conspicuous places in the City of Long Beach.

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

Section 11. The City Clerk shall certify to the passage of this ordinance by the City Council of the City of Long Beach and shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach.

I hereby certify that on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the question of emergency of this ordinance at its meeting of _____, 2010, the ordinance was declared to be an

1 emergency by the following vote:

2 Ayes: Councilmembers: _____

3 _____

4 _____

5 Noes: Councilmembers: _____

6 _____

7 Absent: Councilmembers: _____

8 _____

9
10 I further certify that thereafter, at the same meeting, upon a roll call and
11 vote on adoption of the ordinance, it was adopted by the City Council of the City of Long
12 Beach by the following vote:

13 Ayes: Councilmembers: _____

14 _____

15 _____

16 Noes: Councilmembers: _____

17 _____

18 Absent: Councilmembers: _____

19 _____

20
21 I further hereby certify that the foregoing ordinance was adopted on final reading
22 by the City Council of the City of Long Beach at its meeting of _____, 20____,
23 by the following vote:

24 Ayes: Councilmembers: _____

25 _____

26 _____

27 Noes: Councilmembers: _____

28 _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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