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REPORT NO. R 10 - 0 3 8 9
NOV 12 2010

REPORT RE:

**BALLOT RESOLUTION AND BALLOT TITLE RESOLUTION
REGARDING A PROPOSED BALLOT MEASURE TO IMPOSE A TAX ON MEDICAL
MARIJUANA COLLECTIVES IN LOS ANGELES AND AN ORDINANCE CALLING A
SPECIAL ELECTION AND CONSOLIDATING IT WITH THE CITY'S PRIMARY
NOMINATING ELECTION ON MARCH 11, 2011**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 08-0923-S4

Honorable Members:

On November 3, 2010, your Honorable Body requested this Office to prepare the documents necessary to place a proposed measure to tax medical marijuana collectives in Los Angeles on the March 8, 2011, ballot. This Office now transmits the ballot resolution, ballot title resolution, and election ordinance necessary to place the measure on the ballot. We have previously advised that the City should not, and indeed legally cannot, allow and tax marijuana sales. Moreover, medical marijuana collectives in the City are required to operate on a not for profit basis. As discussed below, the collectives operating under the City's ordinance would be exempt from a business tax, or fee measured by gross receipts or income. Therefore, the proposed measure would be of little or no effect.

Summary of Measure's Provisions

The proposed measure would impose a yearly tax of \$50.00 for each \$1,000 of gross receipts earned by a medical marijuana collective. "Gross Receipts" includes any item that would be included in gross receipts under Los Angeles Municipal Code

(LAMC) § 21.00, and specifically includes Membership dues, the value of in-kind contributions, reimbursements provided by members, regardless of form, and anything else of value obtained by a medical marijuana collective.

A “medical marijuana collective” means any activity engaged in by an entity as defined in Article 5.1 of the LAMC (the provisions of the Code that regulate the collective cultivation of medical marijuana) or California Health and Safety Code sections 11362.5, *et seq.*, (the provisions of the Health and Safety Code that relate to the compassionate use of marijuana).

Subsection 21.50(e) of the proposed measure would provide that no incentive, exemption, rebate, or other reduction in tax shall lower the tax imposed by this measure unless the incentive specifically states that the reduction applies to a tax imposed under this section, or California or Federal law require that the reduction apply. Because currently no tax reductions reference LAMC § 21.50, no reductions would apply to the taxes imposed by this section except for the exemption for charitable businesses.

LAMC § 21.22(a) provides, in pertinent part:

The provisions of [Article 2.1] shall not be construed to require the payment of any business tax to operate or carry on the functions of any charitable or religious institution, organization or association organized for charitable or religious purposes and conducted solely for such purposes . . . nor shall any business tax be required to be paid by any religious or other charitable association . . . when the net proceeds derived from any of the same are not used for the purpose of private gain to any individual but are used wholly for the benefit of such organization or for charitable or benevolent purposes, nor shall a business tax be required to be paid by any credit union corporation. Such persons are entitled to receive tax exempt registration certificates upon application for and qualification as provided in this section.

LAMC Section 21.22 ensures that the City complies with the requirements of the California Constitution, Art. XIII, § 26(d)¹ and Revenue and Taxation Code § 37101(c), which prohibit the City from imposing a business tax or fee based on income or gross receipts upon any entity that qualifies for tax-exempt status under state or federal law.

¹ Under Article XIII, § 26(d), “[a] nonprofit organization that is exempted from taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, is exempt from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency.”

Therefore, since under the City's law medical marijuana collectives are required to function as not for profit organizations, under section 21.22 and Article XIII, §26(d) of the California Constitution, medical marijuana collectives will be exempt from taxes on gross receipts under the proposed measure.

Federal and California Law

During your Honorable Body's consideration of this matter on November 3, 2010, we were asked to include in this report a brief discussion of federal law and California law and how they interact with respect to medical marijuana collectives. In general, federal criminal laws apply to people, not states. Thus, if someone violates a federal criminal law, they have committed a federal crime, but with very rare exceptions those statutes do not require a state or municipality to take action. In short, a state does not commit a federal crime if one of its citizens does. Consequently, federal law can criminalize an action that state law considers legal or does not address. This essentially is what occurred with the passage of the Compassion Use Act (CUA), which decriminalized the possession and cultivation of marijuana for medical use in limited circumstances.

At the federal level, marijuana is a controlled substance and virtually all possession, sales, storage and cultivation is a federal crime under the federal Controlled Substances Act. See 28 U.S.C. §§ 841 and 844. Under the Supremacy Clause, Art. VI, Sec. 2, of the United States Constitution, these laws are "the supreme Law of the Land" and apply in all parts of California. If California passes contrary laws legalizing marijuana possession or sales, federal law would still apply in California and such activity would remain a federal crime. See United States v. Napier (6th cir. 2000) 233 F. 3d 394, 404 (The federal government could prosecute a weapons crime despite a state constitutional provision that presumably allowed possession of the weapon.)

California defenses to marijuana crimes, such as those provided in the CUA, are disregarded by federal law. See Adams v. Maryland (1954) 347 U.S. 179, 183 (The Supremacy Clause requires that a federal law apply to shield a person from prosecution despite a contrary state law.) Therefore, sales, cultivation, storage and similar activity relating to marijuana, in almost all circumstances, remain federal crimes and can be prosecuted by the United States Government despite the Compassionate Use Act.

In most respects California and federal law are compatible. California criminalizes possession, sales, storage, and other marijuana-related activity. See Cal. Health and Safety Code §§ 11357 *et seq.* As we have previously discussed, the CUA and the Medical Marijuana Program (MMP) simply provide limited affirmative defenses to individual patients, primary caregivers, and qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes. Cal. Health and Safety Code § 11362.775.

Nothing in California law provides an affirmative defense to sales of marijuana. With respect to the exchange of funds, section 11362.765(c) provides an affirmative defense only for a primary caregiver who receives "compensation for actual expenses," including "out of pocket" expenses, incurred in cultivating and providing marijuana to a qualified patient. Section 11363.765(a) specifically provides that it shall not "authorize any individual or group to cultivate or distribute marijuana for profit."

Thus, under both federal law and California law marijuana sales are illegal under all circumstances. Likewise, under both federal and California law no defense from prosecution is provided for any person who cultivates or distributes marijuana for profit, including medical marijuana collectives or cooperatives. Section 11362.775(c) provides only a very limited defense for primary caregivers who are reimbursed for out of pocket expenses incurred in providing marijuana to a qualified patient. Therefore, California law and federal law both treat general exchanges of marijuana for currency as criminal acts. Accordingly, based on the illegality of the sale of marijuana and on the exemption from business taxes or fees for organizations that operate on a not for profit basis, the proposed measure would be of little or no effect.

Voter Approval and Deadline for Council Action

The ballot measure imposes a general tax and therefore must be approved by a majority of the voters in the March 8, 2011 election. Cal. Const., Article XIII C, §2(d).

Council must adopt all resolutions and election ordinances necessary to place a measure on the ballot by no later than 110 days before the election. City Election Code § 601. With regard to the March 8, 2011 election, that deadline for Council action is November 17, 2010.

If you have any questions regarding this matter, please contact Deputy City Attorney Dan Whitley at (213) 978-7786. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

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Transmittal

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RESOLUTION

Resolution providing that a ballot measure be submitted to the qualified voters of the City of Los Angeles.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOS ANGELES AS FOLLOWS:

Section A. The following ordinance of the City of Los Angeles is hereby proposed to be submitted for approval by a majority of the qualified voters of the City of Los Angeles at a Special Election to be called and consolidated with the City's Primary Nominating Election held on March 8, 2011:

ORDINANCE NO. _____

An ordinance adding Section 21.50 to the Los Angeles Municipal Code to provide funding through imposition of a general tax.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 21.50 is added to the Los Angeles Municipal Code to read:

Sec. 21.50. TAXATION OF MEDICAL MARIJUANA COLLECTIVES.

(a) No registration certificate or permit issued under the provisions of Article 1 or Article 1.5 of Chapter 2 of this Code, or the payment of any tax required under the provisions of Article 1 or Article 1.5 of Chapter 2 of this Code shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this section implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed by California and federal law. Nothing in this Section shall be applied or construed as authorizing the sale of marijuana.

(b) Every person engaged in operating or otherwise conducting a medical marijuana collective not otherwise specifically taxed by other business tax provisions of this Chapter, shall pay a business tax of \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof.

(c) For purposes of this section, a "medical marijuana collective" means any activity regulated or permitted by Article 5.1 of this Code or

Health and Safety Code sections 11362.5, *et seq.*, that involves planting, cultivating, harvesting, transporting, dispensing, delivering, providing, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the marijuana plant for medical purposes.

(d) For purposes of this section, "gross receipts" includes all amounts that would be considered gross receipts under section 21.00, including without limitation:

- (i) Membership dues;
- (ii) The value of in-kind contributions;
- (iii) Reimbursements provided by members, regardless of form; and
- (iv) Anything else of value obtained by a medical marijuana collective.

(e) All taxpayers subject to this section must pay the full tax imposed by this section regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in the Municipal Code, except as required by California or Federal Law. No provision in the Municipal Code can lower the tax rate set forth in this section or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

(f) The City Council may impose the tax authorized by this section at a lower rate and may establish exemptions, incentives, or other reductions as otherwise allowed by the Charter and California law. No action by the Council under this paragraph shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction and restoring the maximum tax specified in this section.

Sec. B. The City Clerk is hereby authorized and directed to publish a notice containing the proposed ballot measure, specifying the date of March 8, 2011 as the date the measure is to be voted upon by the qualified voters of the City of Los Angeles. The notice shall be published once in a newspaper of general circulation in the City of Los Angeles, and in each edition thereof during that day of publication. The City Clerk is authorized and directed to prepare and keep in the City Clerk's office a sufficient supply of copies of the proposed ballot measure and to distribute the proposed ballot measure to any and all persons requesting a copy. Further, the City Clerk is authorized and directed to mail copies of the proposed ballot measure to each of the qualified voters of the City of Los Angeles.

Sec. C. The City Clerk is hereby authorized and directed to cause a notice to be published once in a newspaper of general circulation that copies of voter information pamphlets containing the proposed ballot measure may be obtained upon request in the City Clerk's office.

Sec. D. The City Clerk shall file a duly certified copy of this Resolution forthwith with the Board of Supervisors and with the Registrar-Recorder of the County of Los Angeles.

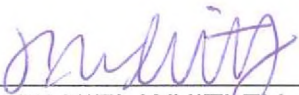
I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
DANIEL WHITLEY
Deputy City Attorney

Date 11/12/10

C.F. No. 08-0923-S4

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RESOLUTION

WHEREAS, the Council of the City of Los Angeles has adopted a resolution to place an ordinance before the qualified voters of the City of Los Angeles at the March 8, 2011 Special Election to be consolidated with the City's Primary Nominating Election to be held on the same date; and

WHEREAS, the City Election Code requires the City Attorney to prepare and present a ballot title and question consisting of an impartial statement of the measure; and

WHEREAS, the City Attorney has presented the following ballot title and question for the proposed measure:

TAXATION OF MEDICAL MARIJUANA COLLECTIVES. PROPOSITION ____.

In order to fund general municipal services, including but not limited to such matters as police protection and crime suppression services, fire prevention and suppression services, park and recreation facilities, and general improvements throughout the City, shall a tax be authorized on marijuana collectives of \$50 per \$1000 of gross receipts recognizing that the sale of marijuana is illegal?

NOW, THEREFORE, BE IT RESOLVED that the ballot title and question presented by the City Attorney be adopted by the City Council.

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

C.F. No. 08-0923-S4

ORDINANCE NO. _____

An ordinance calling a Special Election to be held on Tuesday, March 8, 2011 for the purpose of submitting to the qualified voters of the City of Los Angeles a certain tax measure and consolidating this Special Election with the City's Primary Nominating Election to be held on the same date.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A Special Election is hereby called to be held in the City of Los Angeles on March 8, 2011, for the purpose of submitting to the qualified voters of the City a certain measure ordered submitted by the Council of the City of Los Angeles.

Sec. 2. The ballot title and question to be used at the Special Election for the measure to be submitted to the qualified voters of the City of Los Angeles shall be:

**TAXATION OF MEDICAL MARIJUANA COLLECTIVES.
PROPOSITION ____.**

In order to fund general municipal services, including but not limited to such matters as police protection and crime suppression services, fire prevention and suppression services, park and recreation facilities, and general improvements throughout the City, shall a tax be authorized on marijuana collectives of \$50 per \$1000 of gross receipts recognizing that the sale of marijuana is illegal?

Sec. 3. The measure shall be designated on the ballot or ballot pages by a letter or number determined by the City Council in accordance with applicable City and state laws. Upon the designation by the proper officials of the letter or number to be assigned to the measure, that letter or number is hereby adopted and shall be the designation for the ballot title.

Sec. 4. To vote on the measure, the voter shall mark the ballot next to the word "Yes" or the word "No." A "Yes" vote shall be counted in favor of adoption of the measure and a "No" vote shall be counted against adoption of the measure.

Sec. 5. The Special Election hereby called shall be, and hereby is ordered to be, consolidated with the City's Primary Nominating Election to be held in the City of Los Angeles on Tuesday, March 8, 2011.

Sec. 6. The voting polls on election day shall open at 7:00 a.m., March 8, 2011, and shall remain open until 8:00 p.m. of the same day when the voting polls shall be closed, except as provided in City Election Code Section 857.

Sec. 7. The election precincts, polling places, and officers of election for the Special Election shall be the same as those provided in the City of Los Angeles for the Primary Nominating Election, and the elections shall be held in all respects as if there were only one election. Furthermore, for the precincts, polling places, and officers of election, reference is hereby made to the list that will be prepared and approved by the City Clerk and filed in the City Clerk's Office not later than February 8, 2011, and that list is incorporated into and made part of this ordinance.

Sec. 8. In all other particulars, the Special Election shall be held and conducted as provided by law for the conduct of the Primary Nominating Election in the City of Los Angeles.

Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  _____
DANIEL WHITLEY
Deputy City Attorney

Date 11/12/10

File No. 08-0923-S4