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DATE : MAY 25 2012

Planning and Land Use Management Committee
Council of the City of Los Angeles
City Hall, Room 395
Los Angeles, CA 90012

ATTN: Sharon Gin, Legislative Assistant

CITY PLAN CASE NO.: Special Item

Transmitted herewith is a proposed ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent Appellate Court decisions concerning medical marijuana; Findings and recommendation pursuant to City Charter § 556 and §558(b)(2).

The draft ordinance modifies the earlier version previously recommended by a unanimous vote of the City Planning Commission in response to appellate rulings that have been issued since January 26, 2012, the date of the CPC recommendation. Like the earlier version, the draft ordinance would ban medical marijuana businesses, with an amended definition which includes any location where marijuana is cultivated, processed, distributed, delivered or given away. The draft ordinance excludes the following from the definition of medical marijuana business: (1) any dwelling unit where a maximum of three or fewer qualified patients or primary caregivers process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA.

On May 24, 2012, following a public hearing, the City Planning Commission approved the proposed ordinance (attached) and recommended its adoption by the City Council; adopted the City Attorney Report as its report on the subject; adopted the attached Findings; adopted Categorical Exemption No. ENV-2012-1273-CE.

This action was taken by the following vote:

Moved: Roschen
Seconded: Hovaguimian
Ayes: Cardoso, Burton, Freer, Kim, Lessin, Woo

Vote: 8-0

James K. Williams, Commission Executive Assistant II
City Planning Commission

Attachments: Proposed Ordinance, Findings
Senior City Planner: Charles Rausch
Cc: Terry Kaufmann Macias, Steven Blau, Adrienne Khorasanee, Deputy City Attorneys, Land Use Division

Recommendations to City Council:

1. **Recommend** that the City Council **adopt** the Report prepared by the Office of the City Attorney entitled "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code In Response To Recent Appellate Court Decisions Concerning Medical Marijuana" (City Attorney Report), as its report on the subject.
2. **Recommend** that the City Council determine that the ordinance is exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA Narrative and draft Notice of Exemption (Categorical Exemption No. ENV-2012-1273-CE), attached as Exhibits 2 and 3, respectively, to the City Attorney Report.
3. **Recommend** that the City Council direct that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.
4. **Recommend** that the City Council **adopt** the Findings and Recommendation Pursuant To City Charter § 556 and §558(b)(2) attached as Exhibit 4, to the City Attorney Report.
5. **Recommend** that the City Council **adopt** the attached draft ordinance.

ORDINANCE NO. _____

An ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code, in response to recent appellate court decisions, by prohibiting medical marijuana businesses, while preserving the limited state law medical marijuana criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

WHEREAS, the Compassionate Use Act (CUA), adopted by the voters in 1996, and the Medical Marijuana Program Act (MMPA), enacted by the State Legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes that include ensuring that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to state criminal prosecution or sanction;

WHEREAS, commencing in 2007, according to local media reports and neighborhood sightings and complaints, more than 850 medical marijuana businesses randomly opened, closed and reopened storefront shops and commercial growing operations in the City without any land use approval under the Los Angeles Municipal Code (LAMC or this Code) and, since that time, an unknown number of these businesses continue to randomly open, close, and reopen in Los Angeles, each with no regulatory authorization from the City;

WHEREAS, the Los Angeles Police Department (LAPD) has reported that, as the number of marijuana dispensaries and commercial growing operations continue to proliferate without legal oversight, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses;

WHEREAS, in January 2010, the City established a comprehensive regulatory framework to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety, by adopting the Medical Marijuana Ordinance (MMO), adding Article 5.1, Chapter IV, of the LAMC, subsequently amended by ordinances including, in 2011, Temporary Urgency Ordinance No. 181530 (the TUO);

WHEREAS, the City's efforts to foster compassionate patient access to medical marijuana, which capped the number of dispensaries through priority registration opportunities for earlier existing collectives, a drawing, and mandatory geographic dispersal, resulted in an explosion of lawsuits by medical marijuana businesses challenging the validity of the MMO and TUO. These related actions were deemed complex and are assigned to Department 309 of the Los Angeles Superior Court. *MJ Collectives Litigation: Americans for Safe Access et al. v. City of Los Angeles, et al,*

Los Angeles Superior Court, Lead Case No. BC433942 (and all related actions). These lawsuits have been accompanied by the continued opening and operation of unpermitted businesses, unending neighborhood complaints regarding crime and negative secondary effects, an inappropriate and overly excessive drain upon civic legal and law enforcement resources;

WHEREAS, on October 4, 2011, the Second Appellate District of the California Court of Appeal, whose decisions bind the City of Los Angeles, ruled in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011) (Pack), that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal Controlled Substances Act (CSA) [21 U.S.C. Section 801, *et seq.*], which bans marijuana for all purposes;

WHEREAS, the *Pack* court held, as more particularly stated in the opinion, that while cities may enact prohibitions that restrict and limit medical marijuana businesses, cities are preempted under the CSA from enacting affirmative regulations that permit or authorize medical marijuana businesses and marijuana related activities, and further raised the specter of violation of federal law through the actions of individual city officials, 199 Cal.App.4th1070, 1091, fn. 27;

WHEREAS, although the Los Angeles Superior Court issued a narrow injunction against pieces of the MMO in December 2010, on October 14, 2011, it: (1) denied numerous motions to enjoin the MMO, as amended; (2) declined to address the impact of federal preemption on the City's medical marijuana regulations in light of *Pack* until that case becomes final or until "our Supreme Court decides to weigh in on the federal preemption issue"; and (3) observed that *Pack* could have a profound impact on the TUO "which bears more than a passing resemblance to the Long Beach medical marijuana ordinance";

WHEREAS, given the similarities between the ordinance at issue in *Pack* and the City's MMO, as amended, and to avoid any possibility of violating federal law, the City discontinued implementing the MMO, as amended. Further, given the multiple threats from dispensaries to litigate each and every clause of the registration provisions of the MMO, as amended, the City realizes that it cannot ever implement the amended MMO without incurring unending and pointless litigation intended to stymie any future implementation of these regulations;

WHEREAS, in December 2011, California Attorney General Kamala Harris advised the State Legislature that new legislation is required in order to resolve questions of law regarding medical marijuana that are not answered, but instead are left open and unclear by existing state law. The Attorney General specifically called out the need for legislation on the contours of collective and cooperative cultivation, as well as on the definition and rules for dispensaries;

WHEREAS, in early 2012, the California Supreme Court granted review of *Pack*, as well as review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center*, 200 Cal.App.4th 885 (4th Dist., 2011) and *People v. G3 Holistic*, 2011 Cal.App. Unpub. LEXIS 8634, both recognizing that cities may properly ban medical marijuana businesses consistent with the CUA and MMPA; and further declined to enjoin a complete ban of medical marijuana business then proposed for the City of Long Beach;

WHEREAS, additional appellate rulings concerning medical marijuana were issued in February 2012, including by the Second Appellate District of the California Court of Appeal in the case of *People v. Colvin*, 203 Cal.App.4th 1029 (2012), and by the Fourth Appellate District of the California Court of Appeal in the case of *City of Lake Forest v. Evergreen Holistic Collective*, 203 Cal.App.4th 1413 (2012), and these additional rulings are the subject of requests for depublication and California Supreme Court review;

WHEREAS, an additional appellate ruling concerning medical marijuana was issued in March 2012, by the Second Appellate District of the California Court of Appeal in the case of *People ex rel. Trutanich v. Joseph*, 2012 Cal.App. LEXIS 437 (2012), which held that that neither section 11362.775 nor section 11362.765 of the MMPA immunizes marijuana sales activity. "Section 11362.775 protects group activity 'to cultivate marijuana for medical purposes.' It does not cover dispensing or selling marijuana." "Section 11362.765 allows reasonable compensation for services provided to a qualified patient or person authorized to use marijuana, but such compensation may be given only to a 'primary caregiver.'";

WHEREAS, the LAPD has reported that all of the medical marijuana business in the City which they have investigated are involved in the sale of marijuana and compensation is being provided by parties to persons other than those lawfully designated at their primary caregiver, and are similarly in violation of the MMPA under the analysis of the Second Appellate District in *People ex rel. Trutanich v. Joseph*; and

WHEREAS, the City seeks to address the continued proliferation of medical marijuana businesses that have previously argued to the courts, contrary to the City's laws, that all medical marijuana businesses, including those selling from storefront shops to all persons with recommendations, may open, close, reopen, and operate at will in perpetuity, with vested rights and without any regulation, in the City.

NOW, THEREFORE,

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

Section 1. Article 5.1 of Chapter IV of the Los Angeles Municipal Code is amended in its entirety to read as follows:

ARTICLE 5.1

MEDICAL MARIJUANA

SEC. 45.19.6. PURPOSES AND INTENT.

The purpose of this Article is to permanently repeal the City's existing medical marijuana legislation in response to the conflicting decisions of the appellate courts by prohibiting medical marijuana businesses, while preserving the limited state law medical marijuana criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance. It is also the purpose of this Article to stem the negative impacts and secondary effects associated with the ongoing medical marijuana businesses in the City, including but not limited to the extraordinary and unsustainable demands that have been placed upon scarce City policing, legal, policy, and administrative resources; neighborhood disruption, increased transient visitors, and intimidation; the unavoidable exposure of school-age children and other sensitive residents to medical marijuana; drug sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana recommendations; and murders, robberies, burglaries, assaults, and other violent crimes. This Article is not intended to conflict with federal or state law, nor is this Article intended to answer or invite litigation over the unresolved legal questions posed by the California Attorney General or by case law regarding the scope and application of state law. It is the intention of the City Council that this Article be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

SEC. 45.19.6.1. DEFINITIONS.

A. The following words or phrases, when used in this Article, shall be construed as defined below. Words and phrases not defined here shall be construed as defined in Section 11.01 and 12.03 of this Code.

"**Building**" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.

"**Location**" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

"**Marijuana**" shall be construed as defined in California Health and Safety Code Section 11018 and further shall specifically include any product that contains marijuana or a derivative of marijuana.

"**Medical marijuana business**" means either of the following:

(1) Any location where marijuana is cultivated, processed, distributed, delivered or given away to a qualified patient, a person with an identification card, or a primary caregiver.

(2) Any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver.

(3) Notwithstanding Subparagraphs 1 and 2 above, "medical marijuana business" shall not include any of the following, which shall not be subject to enforcement for violation of this Article:

(a) Any dwelling unit where a maximum of three (3) or fewer qualified patients, persons with an identification card, and/or primary caregivers associate to collectively or cooperatively cultivate marijuana on-site for their own personal medical use or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*;

(b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;

(c) The location of any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or

(d) Any vehicle during only that time reasonably required for its use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport,

distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765.

"**Structure**" means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

"**Vehicle**" means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

B. The following words or phrases when used in this Section shall be construed as defined in California Health and Safety Code Sections 1746, 11362.5, and 11362.7.

"Hospice";
"Identification card";
"Person with an identification card";
"Primary caregiver"; and
"Qualified patient".

SEC. 45.19.6.2. PROHIBITED ACTIVITIES.

A. It is unlawful to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any medical marijuana business.

B. The prohibition in Subsection A, above, includes renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.

SEC. 45.19.6.3. NO AUTHORITY TO PERMIT USE IN ANY ZONE.

The use of any building, structure, location, premises or land for a medical marijuana business is not currently enumerated in the Los Angeles Municipal Code as a permitted use in any zone, nor is the use set forth on the Official Use List of the City as determined and maintained by the Zoning Administrator. The Zoning Administrator shall not have the authority to determine that the use of any building, structure, location, premises or land as a medical marijuana business may be permitted in any zone or to add medical marijuana business to the Official Use List of the City.

SEC. 45.19.6.4. NO VESTED OR NONCONFORMING RIGHTS.

This Article prohibits medical marijuana businesses. Neither this Article, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right regarding any medical marijuana business.

SEC. 45.19.6.5. DUE PROCESS AND ENFORCEMENT.

As has always been the law in the City, any enforcement action by the City for failure to comply with this Article shall be accompanied by due process. Every violation of this Article and each day that a violation of this Article occurs shall constitute a separate violation and shall be subject to all criminal and civil remedies and enforcement measures authorized by Sections 11.00 and 12.27.1 of this Code. In any enforcement proceeding pursuant to Section 12.27.1, the notice required by Subsection C.1 of Section 12.27.1 shall be provided only to the owner and lessee of the medical marijuana business, and shall not also be provided to other property owners within a 500-foot radius.

SEC. 45.19.6.6. SEVERABILITY.

If any provision or clause of this Article or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other Section provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application thereof, and to this end the provisions and clauses of this Section are declared to be severable.

Sec. 2. 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 _____
STEVE BLAU
Deputy City Attorney

Date May 15, 2012

File No. _____

Pursuant to Charter Section 559, I approve this ordinance on behalf of the City Planning Commission and recommend that it be adopted . . . . . .

May 15, 2012

See attached report.

_____
Michael LoGrande
Director of Planning

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FINDINGS:

1. **The action is in substantial conformance with the purposes, intent and provisions of the General Plan. (City Charter § 556.)**

Medical marijuana business is not an enumerated use in the Zoning Code. Further, given the ruling of the Court of Appeal in *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011), the Zoning Administrator does not now have the affirmative right to add this as an enumerated use. The Zoning Code is an essential implementation tool of the General Plan. The proposed ordinance acts to confirm that medical marijuana businesses are a disallowed activity. It is therefore fully consistent with the General Plan.

Criminal activity, including robberies and other crimes are associated with medical marijuana businesses in the City. Neighborhoods and businesses complain about the disruption and public safety issues presented by medical marijuana businesses in the City. By banning medical marijuana businesses, the proposed ordinance furthers the following goals and objectives of the General Plan:

- Housing Element goal 5A to create "a livable City for existing and future residents and one that is attractive to future investment."
- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."
- Economic Development goal 7.2 to "establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality."
- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

2. **Adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. (City Charter §558(b)(2).)**

Conformity With Public Necessity: The proposed ordinance is in conformity with public necessity because it: (1) prohibits rather than authorizes medical marijuana businesses as required by the ruling by the California Court of Appeal in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011); (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action; and (4) preserves the limited state law medical marijuana criminal immunities consistent with the CUA and MMPA, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

Prohibits Rather Than Authorizes Medical Marijuana Businesses As Required By *Pack*: The

Pack court held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the Los Angeles Municipal Code (LAMC), are preempted by the federal Controlled Substances Act (CSA). The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The proposed ordinance is in conformity with public necessity required by *Pack* because it prohibits rather than authorizes medical marijuana businesses.

Required To Prevent the Continuing Drain of Litigation Against The City; Ends The Unregulated Proliferation Of Medical Marijuana Businesses In Los Angeles Without The Likelihood of Substantial Further Legal Action: Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in the City in violation of the City's Zoning Code. Since that time, an unknown number of these businesses, estimated to exceed 500, continue to open and operate in Los Angeles, all in violation of the City's Zoning Code. The Los Angeles Police Department has reported that, as the number of marijuana dispensaries and commercial growing operations proliferate, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses.

The City's prior comprehensive regulatory framework, enacted in January 2010 as Medical Marijuana Ordinance 181069 (MMO), amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530 (TUO), became the subject of nearly two years of intensive and voluminous litigation. More than a dozen legal theories were advanced against the City by more than one hundred plaintiffs in an effort to obtain a declaration that these measures were legally invalid. The protracted litigation was a substantial drain of City resources and personal. The proposed ordinance is in conformity with public necessity because it prevents the continuing drain of litigation against the City and ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action.

Preserves the Limited State Law Medical Marijuana Criminal Immunities Codified in the Compassionate Use Act and Medical Marijuana Program Act: The CUA, adopted by the voters in 1996, and MMPA, enacted by the State Legislature in 2003, provide California's qualified patients, persons with an identification card, and their primary caregivers, with limited immunities to specified criminal prosecutions under State law for the purpose of enabling access to marijuana for medical purposes. The proposed ordinance excludes from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed ordinance is in conformity with public necessity by preserving the limited state law medical marijuana criminal immunities consistent with state law.

Conformity With Public Convenience: The proposed ordinance is in conformity with public convenience because it confirms and restores the rule of law, as expressed by the *Pack* court, in Los Angeles. Further, the ordinance exempts from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed

ordinance is in conformity with public convenience by preserving the limited state law medical marijuana criminal immunities, and by not prohibiting seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana, consistent with in state law.

Conformity With General Welfare: The proposed ordinance is in conformity with general welfare because it: (1) prohibits medical marijuana businesses which are associated with criminal activity, including murders, robberies, and other crimes; (2) resolves neighborhoods and business complaints about disruption and public safety; (3) prevents the continuing drain of litigation against the City; (4) ends the unregulated proliferation of medical marijuana businesses in Los Angeles without creating the likelihood of substantial further legal action; and (5) and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with in state law.

Conformity With Good Zoning Practice: The proposed ordinance is in conformity with good zoning practice by prohibiting medical marijuana businesses which are not an enumerated use in the Zoning Code. The LAMC limits uses to those expressly enumerated in the Zoning Code. Medical marijuana businesses are not an allowed, enumerated use in any zone in the City.

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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 2 - 0 1 3 6

MAY 1 5 2012

REPORT RE:

PROPOSED ORDINANCE REPEALING AND REPLACING ARTICLE 5.1 OF CHAPTER IV OF THE LOS ANGELES MUNICIPAL CODE IN RESPONSE TO RECENT APPELLATE COURT DECISIONS CONCERNING MEDICAL MARIJUANA

The Honorable City Planning Commission
of the City of Los Angeles
Room 272, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File Nos. 11-1737 and 11-1737-S1
CEQA: ENV-2012-1273-CE

Honorable Members:

This Office has prepared and now transmits for your consideration a draft ordinance (Attachment 1), approved as to form and legality. The draft ordinance would: (1) repeal and replace Article 5.1 of Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC), in response to recent appellate court decisions, by prohibiting medical marijuana businesses; and (2) preserve the limited state law medical marijuana criminal immunities consistent with the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

This Office prepared the draft ordinance in response to the Parks-Perry motion (CF No. 11-1737), Huizar-Englander motion (CF No. 11-1737-S1), and to enable the City to be responsive to recent appellate court decisions regarding medical marijuana and the City's ongoing medical marijuana litigation.

The draft ordinance replaces the draft ordinance previously considered by the City Planning Commission (CPC) on January 26, 2012, when it unanimously voted to recommend approval of the ordinance as then drafted. The City Council has not acted on the CPC's prior recommendation. The primary difference between the new draft and the prior draft is that the new draft addresses processing and cultivation, not addressed by the prior draft. Cultivation was nonetheless the topic of inquiry by the City Planning Commission and it and processing are now explicitly addressed in response to opinions issued by the California appellate courts in and subsequent to January, 2012.

Summary and Basis For Consideration By City Planning Commission

In January, 2010, the City established a comprehensive regulatory framework to balance the uncontrolled proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana consistent with state law as codified in the CUA and MMPA, and public safety. The regulatory program, known as Medical Marijuana Ordinance 181069 (MMO), added Article 5.1 to Chapter IV, Public Welfare, of the LAMC. The MMO was amended several times, with the final substantive amendments adopted by the City Council in January, 2011 by Temporary Urgency Ordinance No. 181530 (TUO).

The MMO and its amendments became the subjects of more than two years of intense and voluminous litigation. More than a dozen legal theories were advanced against the City by more than 100 plaintiffs in an effort to obtain a declaration that these measures were legally invalid. One such legal theory was that the MMO was invalid as a land use measure that required review by the City Planning Commission (CPC) that was never obtained. Although the Superior Court issued a narrow injunction against pieces of the MMO in December, 2010, on October 14, 2011, the Superior Court issued a ruling in which it upheld and refused to enjoin the TUO.

Beginning at the same time, in late 2011, the California appellate courts issued an array of opinions, discussed below, interpreting the state's medical marijuana laws which drastically altered the legal landscape. Cities and counties throughout California, including Los Angeles, have been responding to these opinions by considering new legislation to thread the gauntlet of state and federal marijuana laws.

In the first of these opinions, issued on October 4, 2011, just prior to the favorable ruling by the Superior Court, the Second Appellate District of the California Court of Appeal, whose decisions bind the City of Los Angeles, ruled in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011). The *Pack* decision held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal Controlled Substances Act (CSA), because the CSA bans marijuana for all purposes. *Pack* disables the City from proceeding with the MMO or TUO and from enacting new comprehensive rules with affirmative regulations unless and until the

California Supreme Court overturns or substantially modifies the *Pack* appellate court ruling.

The draft ordinance, consistent with state and federal law, including *Pack* and subsequent decisions issued by the California appellate courts discussed below, would ban medical marijuana businesses, which include any location where marijuana is cultivated, processed, distributed, delivered or given away. The draft ordinance however preserves the limited state law medical marijuana criminal immunities by excluding from the definition of medical marijuana business, the following: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA. The draft ordinance thereby preserves the limited state law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with state law.

The draft ordinance is agendized for consideration by the CPC, notwithstanding that it remains a public safety rather than a land use regulation. Review by the CPC at this time will avoid potential delays and substantial expense to the City based upon a replay of earlier court challenges that the measure is a land use one requiring a CPC report and recommendation prior to its submission to the City Council.

Council Requests

On October 12, 2011, Councilmembers Parks and Perry introduced Motion CF No. 11-1737, noting the spike in criminal activity accompanying the passage of local medical marijuana ordinances, including incidents of robberies and other crimes at medical marijuana dispensaries in Los Angeles. The Motion states that, in light of the Court of Appeal ruling in *Pack*, it is "prudent for the City to begin the process of moving away from regulating medical marijuana dispensaries and toward eventual elimination of any sanctioned/permitted medical marijuana activity in the City." The Motion requests that the Planning Department, with the assistance of the City Attorney, "report with recommendations and a plan to phase out the City's current medical marijuana ordinance in conformance with the criminal justice issues identified in this Motion, the recent California Court of Appeals decision [in *Pack*] . . . , and federal law which firmly makes the possession and sale of this drug illegal." On November 16, 2011, the Motion was referred to the Public Safety Committee.

On November 23, 2011, Councilmembers Huizar and Englander introduced Motion CF No. 11-1737-S1, also noting neighborhood complaints about the disruption and public safety issues presented by medical marijuana businesses operating in Los Angeles. The Motion requests that the City Attorney prepare language to: "(1) repeal the MMO and TUO in light of *Pack*; (2) ban marijuana businesses in the City until the *Pack* decision is modified to grant the City the tools to affirmatively regulate and control marijuana businesses; (3) provide *amicus* support to the City of Long Beach petition for review of *Pack*, affirming the need for California Supreme Court finality regarding the scope of permissible local regulation; and (4) confirm the City's commitment to safe access consistent with State criminal immunities (as provided by the CUA and MMPA) through personal participation in medical marijuana cultivation by qualified patients and their primary caregivers, and not though storefront, mobile commercial growing, or other dispensing operations, so long as the laws regarding local regulation remain unsettled."

Regulatory and Litigation Background

In January, 2010, the City established a comprehensive legislative framework to balance the unregulated proliferation of medical marijuana businesses with access by seriously ill patients to marijuana pursuant to state law as codified in the CUA and MMPA. The regulatory program, known as MMO No. 181069, added Article 5.1 to Chapter IV, Public Welfare, of the LAMC. The MMO was modestly amended several times. Its final substantive amendments were adopted by the City Council in January, 2011 by TUO No. 181530.

The MMO and its amendments became the subjects of more than two years of contentious and voluminous litigation. Although the Los Angeles Superior Court issued a narrow injunction against certain provisions of the MMO in December, 2010, the same Court upheld and refused to enjoin the TUO on October 14, 2011. MJ Collectives Litigation: *Americans for Safe Access et al. v. City of Los Angeles*, Los Angeles Superior Court, Lead Case No. BC433942 (and all related actions).

On October 4, 2011, just prior to the favorable ruling by the Superior Court, the Second Appellate District of the California Court of Appeal ruled in the case of *Pack*. The *Pack* decision held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal CSA, because the CSA bans marijuana for all purposes. The court held that while cities may enact prohibitions that restrict and limit collectives, cities are preempted under the CSA from enacting affirmative regulations that permit or authorize collectives and marijuana-related activities. Both a lottery and a City-imposed cap on the number of collectives were expressly stricken by the *Pack* court; both are guiding provisions of the MMO and TUO. *Pack* disables the City from proceeding with the MMO or TUO and from enacting new comprehensive rules with affirmative

regulations unless the California Supreme Court overturns or substantially modifies the *Pack* appellate court ruling.[1]

On December 21, 2011, the Attorney General, after conducting nearly one year of conversations with representatives from law enforcement, cities, counties, and the patient and civil rights communities across the state, sent letters to the State Assembly and localities expressing concerns over the exploitation of California's medical marijuana laws by gangs, criminal enterprises, and others, and urging the State Assembly to establish clear rules governing medical marijuana. The Attorney General called out the need for legislation on the contours of collective and cooperative cultivation, as well as on the definition and rules for dispensaries.

In January, 2012, the California Supreme Court granted review of *Pack*, as well as review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center*, 200 Cal.App.4th 885 (4th Dist., 2011) and *People v. G3 Holistic*, 2011 Cal. App. Unpub. LEXIS 8634, both recognizing that cities may properly ban medical marijuana businesses consistent with the CUA and MMPA.

In February 2012, the appellate courts ruled in the cases of *People v. Colvin*, 203 Cal.App.4th 1029 (2nd Dist. 2012), and *City of Lake Forest v. Evergreen Holistic Collective*, 203 Cal.App.4th 1413 (4th Dist. 2012). *Colvin* held that the activity of collective cultivation includes the act, by a qualified patient, of transporting marijuana sufficient to immunize the patient from prosecution under the state's marijuana laws for the transportation of marijuana grown off-site to a dispensary. *Evergreen* held that a dispensary may only locate where its members collectively and cooperatively cultivate their marijuana, a dispensary that stocks marijuana grown off-site would not qualify for protection under the MMPA, and state law preempts local zoning prohibition of medical marijuana dispensaries. These additional rulings are the subject of requests for depublication and California Supreme Court review.

In March, 2012, the Court of Appeal ruled in the case of *People ex rel. Trutanich v. Joseph*, 2012 Cal. App. LEXIS 437 (2012), that the MMPA does not immunize marijuana sales activity.

These appellate rulings provide varied interpretations of state law and make it impossible for the City to implement the amended MMO without incurring substantial future litigation based upon these decisions.

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[1] In its October 14, 2011 ruling, which followed on the heels of *Pack* by ten days, the Superior Court in the MJ Collectives Litigation declined to resolve the issue of federal preemption of the City's medical marijuana regulations. It observed, however, that *Pack* could have a "profound impact" on the City's regulations which bear "more than a passing resemblance to the Long Beach medical marijuana ordinance."

Summary of Ordinance Provisions

The draft ordinance, consistent with state and federal law, including *Pack* and subsequent decisions issued by the California appellate courts, would ban medical marijuana businesses. The draft ordinance preserves the limited state law medical marijuana criminal immunities by excluding from the definition of medical marijuana business, the following: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA. The draft ordinance thereby preserves the limited state law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with state law.

CEQA Determination

We recommend that, prior to your recommendation of the draft ordinance, you recommend that the City Council determine that adoption of the draft ordinance is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines sections 15060(c)(2) because it will not result in a direct, or reasonably foreseeable indirect physical change in the environment, and is also exempt from CEQA pursuant to State CEQA Guidelines Sections 15301, 15305, 15308 and 15321, and the corresponding City CEQA Guidelines, for the reasons set forth in the CEQA Narrative prepared by the Planning Department and transmitted herewith as Attachment 2.

We also recommend that you recommend that the City Council direct the Department of City Planning to file the Notice of Exemption similar in form to the one transmitted herewith as Attachment 3 with the County Clerk immediately after the Proposed Ordinance is approved and passed in final by the City Council.

If you concur in the above, you may comply with CEQA by making the above determination and direction prior to or concurrent with its recommendation to adopt the draft ordinance.

Recommended Actions

In conjunction with your recommendation to adopt the draft ordinance, we recommend that you take the following actions:

1. Adopt this Report as the report of the City Planning Commission on the subject.

2. Recommend that the City Council determine that the ordinance is exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA Narrative and draft Notice of Exemption attached hereto as Attachments 2 and 3, respectively.

3. Recommend that the City Council direct that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.

4. Adopt the Findings and Recommendation Pursuant To City Charter § 556 and §558(b)(2) attached hereto as Attachment 4.

5 Recommend adoption of the draft ordinance attached hereto as Attachment 1 to the City Council.

If you have any questions regarding this matter, please contact Chief Deputy William C. Carter or Special Assistant City Attorney Jane Usher at (213) 978-8100. She and other members 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
WILLIAM W. CARTER
Chief Deputy City Attorney

WWC:JU:lee

Attachments
1 -- Draft Ordinance
2 -- CEQA Narrative
3 -- CEQA Notice of Exemption
4 -- Findings and Recommendation Pursuant To City Charter § 556 And §558(B)(2)

EXHIBIT 1

ORDINANCE NO. _____

An ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code, in response to recent appellate court decisions, by prohibiting medical marijuana businesses, while preserving the limited state law medical marijuana criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

WHEREAS, the Compassionate Use Act (CUA), adopted by the voters in 1996, and the Medical Marijuana Program Act (MMPA), enacted by the State Legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes that include ensuring that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to state criminal prosecution or sanction;

WHEREAS, commencing in 2007, according to local media reports and neighborhood sightings and complaints, more than 850 medical marijuana businesses randomly opened, closed and reopened storefront shops and commercial growing operations in the City without any land use approval under the Los Angeles Municipal Code (LAMC or this Code) and, since that time, an unknown number of these businesses continue to randomly open, close, and reopen in Los Angeles, each with no regulatory authorization from the City;

WHEREAS, the Los Angeles Police Department (LAPD) has reported that, as the number of marijuana dispensaries and commercial growing operations continue to proliferate without legal oversight, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses;

WHEREAS, in January 2010, the City established a comprehensive regulatory framework to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety, by adopting the Medical Marijuana Ordinance (MMO), adding Article 5.1, Chapter IV, of the LAMC, subsequently amended by ordinances including, in 2011, Temporary Urgency Ordinance No. 181530 (the TUO);

WHEREAS, the City's efforts to foster compassionate patient access to medical marijuana, which capped the number of dispensaries through priority registration opportunities for earlier existing collectives, a drawing, and mandatory geographic dispersal, resulted in an explosion of lawsuits by medical marijuana businesses challenging the validity of the MMO and TUO. These related actions were deemed complex and are assigned to Department 309 of the Los Angeles Superior Court. *MJ Collectives Litigation: Americans for Safe Access et al. v. City of Los Angeles, et al,*

Los Angeles Superior Court, Lead Case No. BC433942 (and all related actions). These lawsuits have been accompanied by the continued opening and operation of unpermitted businesses, unending neighborhood complaints regarding crime and negative secondary effects, an inappropriate and overly excessive drain upon civic legal and law enforcement resources;

WHEREAS, on October 4, 2011, the Second Appellate District of the California Court of Appeal, whose decisions bind the City of Los Angeles, ruled in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011) (Pack), that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal Controlled Substances Act (CSA) [21 U.S.C. Section 801, *et seq.*], which bans marijuana for all purposes;

WHEREAS, the *Pack* court held, as more particularly stated in the opinion, that while cities may enact prohibitions that restrict and limit medical marijuana businesses, cities are preempted under the CSA from enacting affirmative regulations that permit or authorize medical marijuana businesses and marijuana related activities, and further raised the specter of violation of federal law through the actions of individual city officials, 199 Cal.App.4th1070, 1091, fn. 27;

WHEREAS, although the Los Angeles Superior Court issued a narrow injunction against pieces of the MMO in December 2010, on October 14, 2011, it: (1) denied numerous motions to enjoin the MMO, as amended; (2) declined to address the impact of federal preemption on the City's medical marijuana regulations in light of *Pack* until that case becomes final or until "our Supreme Court decides to weigh in on the federal preemption issue"; and (3) observed that *Pack* could have a profound impact on the TUO "which bears more than a passing resemblance to the Long Beach medical marijuana ordinance";

WHEREAS, given the similarities between the ordinance at issue in *Pack* and the City's MMO, as amended, and to avoid any possibility of violating federal law, the City discontinued implementing the MMO, as amended. Further, given the multiple threats from dispensaries to litigate each and every clause of the registration provisions of the MMO, as amended, the City realizes that it cannot ever implement the amended MMO without incurring unending and pointless litigation intended to stymie any future implementation of these regulations;

WHEREAS, in December 2011, California Attorney General Kamala Harris advised the State Legislature that new legislation is required in order to resolve questions of law regarding medical marijuana that are not answered, but instead are left open and unclear by existing state law. The Attorney General specifically called out the need for legislation on the contours of collective and cooperative cultivation, as well as on the definition and rules for dispensaries;

WHEREAS, in early 2012, the California Supreme Court granted review of *Pack*, as well as review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center*, 200 Cal.App.4th 885 (4th Dist., 2011) and *People v. G3 Holistic*, 2011 Cal.App. Unpub. LEXIS 8634, both recognizing that cities may properly ban medical marijuana businesses consistent with the CUA and MMPA; and further declined to enjoin a complete ban of medical marijuana business then proposed for the City of Long Beach;

WHEREAS, additional appellate rulings concerning medical marijuana were issued in February 2012, including by the Second Appellate District of the California Court of Appeal in the case of *People v. Colvin*, 203 Cal.App.4th 1029 (2012), and by the Fourth Appellate District of the California Court of Appeal in the case of *City of Lake Forest v. Evergreen Holistic Collective*, 203 Cal.App.4th 1413 (2012), and these additional rulings are the subject of requests for depublication and California Supreme Court review;

WHEREAS, an additional appellate ruling concerning medical marijuana was issued in March 2012, by the Second Appellate District of the California Court of Appeal in the case of *People ex rel. Trutanich v. Joseph*, 2012 Cal.App. LEXIS 437 (2012), which held that that neither section 11362.775 nor section 11362.765 of the MMPA immunizes marijuana sales activity. "Section 11362.775 protects group activity 'to cultivate marijuana for medical purposes.' It does not cover dispensing or selling marijuana." "Section 11362.765 allows reasonable compensation for services provided to a qualified patient or person authorized to use marijuana, but such compensation may be given only to a 'primary caregiver.'";

WHEREAS, the LAPD has reported that all of the medical marijuana business in the City which they have investigated are involved in the sale of marijuana and compensation is being provided by parties to persons other than those lawfully designated at their primary caregiver, and are similarly in violation of the MMPA under the analysis of the Second Appellate District in *People ex rel. Trutanich v. Joseph*; and

WHEREAS, the City seeks to address the continued proliferation of medical marijuana businesses that have previously argued to the courts, contrary to the City's laws, that all medical marijuana businesses, including those selling from storefront shops to all persons with recommendations, may open, close, reopen, and operate at will in perpetuity, with vested rights and without any regulation, in the City.

NOW, THEREFORE,

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

Section 1. Article 5.1 of Chapter IV of the Los Angeles Municipal Code is amended in its entirety to read as follows:

ARTICLE 5.1

MEDICAL MARIJUANA

SEC. 45.19.6. PURPOSES AND INTENT.

The purpose of this Article is to permanently repeal the City's existing medical marijuana legislation in response to the conflicting decisions of the appellate courts by prohibiting medical marijuana businesses, while preserving the limited state law medical marijuana criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance. It is also the purpose of this Article to stem the negative impacts and secondary effects associated with the ongoing medical marijuana businesses in the City, including but not limited to the extraordinary and unsustainable demands that have been placed upon scarce City policing, legal, policy, and administrative resources; neighborhood disruption, increased transient visitors, and intimidation; the unavoidable exposure of school-age children and other sensitive residents to medical marijuana; drug sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana recommendations; and murders, robberies, burglaries, assaults, and other violent crimes. This Article is not intended to conflict with federal or state law, nor is this Article intended to answer or invite litigation over the unresolved legal questions posed by the California Attorney General or by case law regarding the scope and application of state law. It is the intention of the City Council that this Article be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

SEC. 45.19.6.1. DEFINITIONS.

A. The following words or phrases, when used in this Article, shall be construed as defined below. Words and phrases not defined here shall be construed as defined in Section 11.01 and 12.03 of this Code.

"**Building**" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.

"**Location**" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

"**Marijuana**" shall be construed as defined in California Health and Safety Code Section 11018 and further shall specifically include any product that contains marijuana or a derivative of marijuana.

"**Medical marijuana business**" means either of the following:

(1) Any location where marijuana is cultivated, processed, distributed, delivered or given away to a qualified patient, a person with an identification card, or a primary caregiver.

(2) Any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver.

(3) Notwithstanding Subparagraphs 1 and 2 above, "medical marijuana business" shall not include any of the following, which shall not be subject to enforcement for violation of this Article:

(a) Any dwelling unit where a maximum of three (3) or fewer qualified patients, persons with an identification card, and/or primary caregivers associate to collectively or cooperatively cultivate marijuana on-site for their own personal medical use or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*;

(b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;

(c) The location of any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or

(d) Any vehicle during only that time reasonably required for its use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport,

distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765.

"**Structure**" means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

"**Vehicle**" means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

B. The following words or phrases when used in this Section shall be construed as defined in California Health and Safety Code Sections 1746, 11362.5, and 11362.7.

"Hospice";
"Identification card";
"Person with an identification card";
"Primary caregiver"; and
"Qualified patient".

SEC. 45.19.6.2. PROHIBITED ACTIVITIES.

A. It is unlawful to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any medical marijuana business.

B. The prohibition in Subsection A, above, includes renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.

SEC. 45.19.6.3. NO AUTHORITY TO PERMIT USE IN ANY ZONE.

The use of any building, structure, location, premises or land for a medical marijuana business is not currently enumerated in the Los Angeles Municipal Code as a permitted use in any zone, nor is the use set forth on the Official Use List of the City as determined and maintained by the Zoning Administrator. The Zoning Administrator shall not have the authority to determine that the use of any building, structure, location, premises or land as a medical marijuana business may be permitted in any zone or to add medical marijuana business to the Official Use List of the City.

SEC. 45.19.6.4. NO VESTED OR NONCONFORMING RIGHTS.

This Article prohibits medical marijuana businesses. Neither this Article, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right regarding any medical marijuana business.

SEC. 45.19.6.5. DUE PROCESS AND ENFORCEMENT.

As has always been the law in the City, any enforcement action by the City for failure to comply with this Article shall be accompanied by due process. Every violation of this Article and each day that a violation of this Article occurs shall constitute a separate violation and shall be subject to all criminal and civil remedies and enforcement measures authorized by Sections 11.00 and 12.27.1 of this Code. In any enforcement proceeding pursuant to Section 12.27.1, the notice required by Subsection C.1 of Section 12.27.1 shall be provided only to the owner and lessee of the medical marijuana business, and shall not also be provided to other property owners within a 500-foot radius.

SEC. 45.19.6.6. SEVERABILITY.

If any provision or clause of this Article or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other Section provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application thereof, and to this end the provisions and clauses of this Section are declared to be severable.

EXHIBIT 2

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) NARRATIVE:

ENV 2012-1273-CE

I. PROJECT DESCRIPTION

A proposed ordinance (Appendix A) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana.

II. PROJECT HISTORY

In January 2010, the City established a comprehensive regulatory framework to balance the uncontrolled proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana consistent with State law as codified in the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), and public safety. The regulatory program, known as Medical Marijuana Ordinance 181069 (MMO), added Article 5.1 to Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC). The MMO was amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530 (TUO).

The MMO and its amendments became the subjects of more than two years of intense and voluminous litigation. More than a dozen legal theories were advanced against the City by more than one hundred plaintiffs in an effort to obtain a declaration that these measures were legally invalid. One such legal theory was that the MMO was invalid as a land use measure that required review by the City Planning Commission (CPC) that was never obtained. Although the Superior Court issued a narrow injunction against pieces of the MMO in December 2010, on October 14, 2011, the Superior Court issued a ruling in which it upheld and refused to enjoin the TUO.

Beginning at the same time, in late 2011, the California appellate courts issued an array of opinions, interpreting the state's medical marijuana laws which drastically altered the legal landscape. Cities and counties throughout California, including Los Angeles, have been responding to these opinions by considering new legislation to thread the gauntlet of state and federal marijuana laws.

In the first of these opinions, issued on October 4, 2011, just prior to the favorable ruling by the Superior Court, the Second Appellate District of the California Court of Appeal, whose decisions bind the City of Los Angeles, ruled in the case of *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070. The *Pack* decision held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal Controlled Substances Act (CSA), because the CSA bans marijuana for all purposes. *Pack* disables the City from proceeding with the MMO or TUO and from enacting new comprehensive rules with affirmative regulations unless

and until the California Supreme Court overturns or substantially modifies the *Pack* appellate court ruling.

In January 2012, the California Supreme Court granted review of *Pack*, as well as review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center* (4th Dist., 2011) 200 Cal.App.4th 885 and *People v. G3 Holistic*, 2011 Cal.App.Unpub.LEXIS 8634, both recognizing that cities may properly ban medical marijuana businesses consistent with the CUA and MMPA.

In February 2012, the appellate courts ruled in the cases of *People v. Colvin* (2nd Dist. 2012) 203 Cal.App.4th 1029, and *City of Lake Forest v. Evergreen Holistic Collective* (4th Dist. 2012) 203 Cal.App.4th 1413. *Colvin* held that the activity of collective cultivation includes the act, by a qualified patient, of transporting marijuana sufficient to immunize the patient from prosecution under the state's marijuana laws for the transportation of marijuana grown off-site to a dispensary. *Evergreen* held that a dispensary may only locate where its members collectively and cooperatively cultivate their marijuana, a dispensary that stocks marijuana grown off-site would not qualify for protection under the MMPA, and state law preempts local zoning prohibition of medical marijuana dispensaries. These additional rulings are the subject of requests for depublication and California Supreme Court review.

In March 2012, the Court of Appeal ruled in the case of *People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512 that the MMPA does not immunize marijuana sales activity.

The proposed ordinance, consistent with State and Federal law, including *Pack* and the subsequent decisions issued by California appellate courts, would ban medical marijuana businesses. The proposed ordinance preserves the limited State law medical marijuana criminal immunities by excluding from the definition of medical marijuana business, the following: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA. The proposed ordinance thereby preserves the limited State law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with State law.

III. EXISTING ENVIRONMENT

In January 2010, the City adopted Ordinance 181069, adding Chapter IV, Art. 5.1 §45.19.6 et seq., known as the Medical Marijuana Ordinance (MMO). The MMO limits, among other things, the location of collectives; limits the number of collectives; creates a process by which collectives can apply for status as one of the limited number of allowed collectives; and imposes a number of operating requirements.

By Preliminary Injunction Order (PI Order) issued December 10, 2010, modified nunc pro tunc January 10, 2011, the Los Angeles Superior Court ruled, among other matters, that the City improperly relied upon registration under the City's prior Interim Control Ordinance (ICO) as a basis to distinguish between collectives.[1] The court concluded that reliance upon the ICO registration would fail the rational basis test and violate equal protection under the United States and California Constitutions; the court suggested to the City that a date certain for the establishment of the collective might be a lawful grandfathering alternative.

The City responded to the PI Order by Temporary Urgency Ordinance 181530 (TUO) adopted by the City Council in January 2011. The TUO does not rely upon registration under the ICO, but instead limits dispensaries based upon, among other criteria, a drawing from all dispensaries that commenced operating in the City by September 14, 2007. (TUO Sec. 3.) It requires all entities seeking to participate in the drawing to register with the City Clerk no later than February 18, 2011. TUO Sec. 51(a)((1)(2). Two hundred thirty three (233) businesses submitted documentation to the City Clerk by February 18, 2011 ("TUO List"). In analyzing their applications, the City tentatively concluded that only 50-80 of the applicants of the 233 applicants appeared to comply with the application requirements and could move on to the next registration steps. However, the next registration steps, including a lottery, a cap, moving to compliant locations, and the other registration protocols of the TUO, have not been implemented due to the *Pack* litigation.

In addition to the above, the Office of Finance maintains a list of individuals or entities who have obtained a business tax registration certificate from the City of Los Angeles to pay tax on receipts

[1] On August 1, 2007, the Los Angeles City Council passed Interim Control Ordinance 179027 (ICO). The ICO found that the spirit and intent of the Compassionate Use Act has been exploited and abused for both profit and recreational drug abuse by many of the medical marijuana dispensaries in the City. The ICO prohibited the establishment and operation of new medical marijuana dispensaries pending the earlier of the adoption of a permanent ordinance or the passage of one year. (ICO at § 2.) The ICO prohibition did not apply to dispensaries established before September 14, 2007, the effective date of the ICO, if the owner or operator of the dispensary timely submitted a form and additional documentation designated by the Office of the City Clerk. The City Clerk maintains a list of 182 businesses which submitted documentation with the City Clerk pursuant to the ICO.

Section 4 of the ICO provided an exemption from its prohibitions in cases of hardship. The City Clerk assigned each hardship application a separate Council file number. The City Clerk estimates 772 Council files exist relating to separate hardship applications. A handful of these files were acted upon and denied by the Council because there was no support for the false claim of hardship. The remaining Council hardship files expired with the advent of the City's permanent ordinance. No inquiry was ever undertaken to confirm the existence or veracity at any time of these filers.

attributable to medical marijuana ("Certificate List"). It is the policy of the City's tax collection entity, known as the Office of Finance, to provide a business tax registration certificate to, and to collect taxes from, all who apply, without question or verification. As of November 1, 2011, 372 individuals and entities are on the Certificate List. A copy of the Certificate List, dated Nov. 1, 2011 is available in the case file.

It is the City's best estimate that neither the TUO List nor the Certificate List represents the current actual physical environment. It has been the City's experience that the various lists are populated, in part, by individuals or entities who undertook the effort to get on the list in order to attempt to qualify at some future date for permission to operate in the City, but who were not in fact operating a dispensary. It is also the City's experience that its medical marijuana businesses, in part because they remain an unauthorized use citywide and also because they are subject to federal enforcement scrutiny, open, close, and reopen to avoid detection. Nonetheless, as set forth below, the two lists can serve as a rudimentary basis for estimating current conditions.

It has been, and remains, infeasible for the City to undertake to verify that each of the dispensaries on the TUO and Certificate Lists actual physically exist.[2] The efforts by dispensaries to evade enforcement actions cause opening, closure, and relocation at random. This makes it virtually impossible for the City to ascertain at any given time the actual number of dispensaries which physically exist in the City. Nonetheless, the City, based on the above information, conservatively estimates that the actual number of dispensaries which physically exist in the City to be no more than 372—the number which have sought business tax registration certificates. The actual number of dispensaries is likely significantly less than 372 in light of the fact that a lesser number—233—registered under the TUO. In using these numbers to estimate current actual physical conditions, the City in no way concedes that any particular dispensary listed actually does exist, or came into existence at any particular time.

IV. ENVIRONMENTAL REVIEW UNDER CEQA

Staff has concluded that the following CEQA exemptions are appropriate for the proposed ordinance:

A. 14 California Code of Regulations ("State CEQA Guidelines") Section 15060(c)(2) exempts an activity that "*will not result in a direct or reasonably foreseeable indirect physical change in the environment*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article II, Section 2, Class m consists of "*the adoption of ordinances that do not result in impacts on the physical environment.*"

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[2] The ICO registrant and hardship applicant lists are simply too old to be reliable for any purpose. By way of example, when the City endeavored in the fall of 2009 to confirm the physical status of the 182 ICO registrants, it concluded that only 100 – 130 remained at that time.

Under the California Supreme Court's ruling in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328, an agency has the discretion to decide the environmental baseline subject to support by substantial evidence. For the proposed ordinance, the environmental baseline currently consists of no legally entitled medical marijuana business that the proposed ordinance will now restrict. Specifically, medical marijuana businesses are not an allowed, enumerated use of land in any zone in the City. The LAMC limits uses to those expressly enumerated in the Zoning Code. Any existing medical marijuana businesses are operating in violation of the Zoning Code. Indeed, the Superior Court in the consolidated case *Americans for Safe Access v. City of Los Angeles*, Lead Case No. BC433942, expressly held that medical marijuana businesses in Los Angeles have obtained no vested rights, while appellate courts elsewhere have confirmed that any medical marijuana business opened in the absence of a land use approval authorizing medical marijuana facilities are illegal (see, *e.g., County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 868). Therefore, because currently no medical marijuana businesses are operating in conformance with the Zoning Code and should not be existing uses under the law, for purposes of CEQA the City exercise its discretion to exclude them from the environmental baseline.

The proposed amendments restrict medical marijuana businesses consistent with *Pack* and the Zoning Code. Because the existing baseline of conditions is that existing medical marijuana businesses are operating in violation of the Zoning Code and the proposed ordinance would specifically make medical marijuana businesses a disallowed activity, the proposed ordinance would have no direct or reasonably foreseeable indirect physical change or impact upon the environment.

Should, contrary to the City's determination above, the baseline be construed as including medical marijuana businesses, the following CEQA exemptions are appropriate:

B. State CEQA Guidelines Section 15301 consists of "*the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 1 consists of "*the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.*"

The impact of the proposed ordinance would be to change the operation of a medical marijuana business, which is an operation of a private structure, to another use allowed by right or with further discretionary action and CEQA analysis. Because the proposed ordinance is prohibiting, not allowing the proliferation of, an activity not enumerated in the Zoning Code, the proposed ordinance solely impacts "the operation... of existing... private structures...involving negligible or

no expansion of use beyond that" "existing at the time of the lead agency's determination" or "previously existing."

C. State CEQA Guidelines Section 15305 consists of "*minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density...*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 5 consists of "*minor alterations in land use limitations in areas with less than a 20% slope which do not result in any changes in land use or density...*"

The proposed ordinance will prohibit an activity that is not enumerated in the Zoning Code. It would prohibit medical marijuana businesses, which is less than a minor alteration in land use limitation, in areas with less than a 20% slope. It does not result in any changes in land use and density because the ultimate result is that the exact same enumerated uses that are allowed prior to the adoption of the proposed ordinance would be permitted after the adoption of the proposed ordinance. There may be an immediate and temporary change from baseline due to closure of medical marijuana businesses; however no significant change is anticipated because other uses allowed by right or allowed with further discretionary action and CEQA analysis will be eligible to operate in the same space. The ultimate result is that the exact same enumerated uses that are allowed prior to the adoption of the proposed ordinance would be permitted after the adoption of the proposed ordinance. Therefore, the baseline of existing conditions will have a net result of being the same after the proposed ordinance is adopted.

D. State CEQA Guidelines Section 15308 consists of "*actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 8 consists of "*actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.*"

By banning medical marijuana businesses, the proposed ordinance assures the maintenance, enhancement and protection of the environment in the following ways:

- It enhances the environment by prohibiting rather than authorizing medical marijuana businesses as required by the ruling in *Pack*. The *Pack* court held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal CSA. The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The

proposed ordinance is in conformity with public necessity and protection of the environment where the regulatory process involves procedures for protection of the environment in that it maintains conformity with the *Pack* rulings;

- It protects the environment by banning an activity that is associated with criminal activity. Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in violation of the City's Zoning Code. Since that time, an unknown number of these businesses, estimated to exceed 500, continue to open and operate in Los Angeles, each in violation of the Zoning Code. The Los Angeles Police Department has reported that, as the number of marijuana businesses have proliferated, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses. Neighborhoods and businesses complain about the disruption and public safety issues presented by medical marijuana businesses in the City. By banning medical marijuana businesses, the proposed ordinance maintains the health and safety of the environment which therefore protects the environment;

- It protects and maintains the environment of the city by minimizing the continuing drain of litigation and police services against the City which impacts the City's financial health in its entirety. The City's prior comprehensive regulatory framework, enacted in January 2010 as the Medical Marijuana Ordinance 181069, amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530, became the subject of nearly two years of intensive and voluminous litigation. The protracted litigation was a substantial drain of City resources and personnel. The proposed ordinance promotes protection of the environment because it prevents the continuing drain of litigation and police services; and

- It assures the maintenance and protection of the environment by not changing access to and cultivation for personal use of medical marijuana by qualified patients, persons with an identification card, or primary caregivers, consistent with State law. Under the proposed ordinance, qualified patients, persons with an identification card, or primary caregivers will continue to have access to and be allowed to cultivate for personal use medical marijuana consistent with State law as codified in the CUA and MMPA. The CUA, adopted by the voters in 1996, and MMPA, enacted by the State Legislature in 2003, provide California's qualified patients with serious medical conditions, persons with an identification card, and their primary caregivers, with limited immunities to specified criminal prosecutions under State law for the purpose of enabling access to marijuana for medical purposes. The proposed ordinance excludes from the definition of medical marijuana business locations and vehicles used in strict conformity with State law.

E. State CEQA Guidelines Section 15321 consists of *"Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: (1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement; (2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective"*; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 21 consists of *"actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: 1) The direct referral of a violation of a lease, permit, license, certificate or other entitlement for use or of a general rule, standard of objective to the Attorney General, District Attorney or City Attorney, as appropriate for judicial enforcement. 2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate or other entitlement for use or enforcing the general rule, standard or objective."*

The proposed ordinance would be the adoption of an order enforcing a law, general rule, standard and objective administered and/or adopted by the City because it confirms and restores the rule of law, expressed by the City's Zoning Code and the *Pack* court, in Los Angeles. Further, the proposed ordinance exempts from the definition of medical marijuana business, locations and vehicles used in strict conformity with State law. The proposed ordinance is in conformity with State law because it does not change access and cultivation for personal use by qualified patients, persons with an identification card, or primary caregivers to medical marijuana consistent with the CUA and MMPA.

Furthermore, operation of existing medical marijuana businesses is not an authorized land use as it is not an enumerated use in the Zoning Code. Therefore, the adoption of the proposed ordinance would indirectly revoke leases to businesses not allowed under the Zoning Code.

IV. EXCEPTIONS TO THE USE OF CATEGORICAL EXEMPTIONS

Planning staff evaluated all the potential exceptions to the use of Categorical Exemptions for the proposed ordinance and determined that none of these exceptions apply as explained below:

A. *Cumulative Impact: The exception applies when, although a particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant.*

There are no successive projects of the same type planned for the City of Los Angeles. There may be further revisions of this proposed ordinance as the California Supreme Court issues clarifications of the legal issues surrounding regulation of medical marijuana, but such revisions, if any, cannot be precisely predicted at this time. Furthermore, as set forth below in the Additional Factual Support section, any impact from the proposed ordinance is negligible or close to *de minimis*, so that any incremental effect from the proposed ordinance would not be cumulatively considerable. Finally, it should be noted that existing conditions do not include the enumeration of medical marijuana businesses in the Zoning Code. Any existing medical marijuana business is not an authorized land use. As a result, the proposed ordinance does not result in additional uses after its adoption. Therefore, there would not be any direct incremental effects from the proposed ordinance.

B. *Significant Effect Due to Unusual Circumstances: This exception applies when, although the project may otherwise be exempt, there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. Examples include projects which may affect scenic or historical resources.*

There is no reasonable possibility that the proposed ordinance will have a significant effect due to unusual circumstances. As demonstrated above, there is nothing about any impacts associated with the proposed ordinance that differ from general circumstances of the exemptions listed. There is no unusual concentration of existing medical marijuana businesses; they occur throughout the City. Therefore, the prohibition of such activity will not cause an impact due to unusual circumstances when an entire city is impacted en masse by this proposed ordinance.

Additionally, as set forth in the Additional Factual Support section, any impact from the proposed ordinance is less than significant.

Finally, the proposed ordinance will not have a significant effect on medical marijuana businesses that cease to operate as qualified patients, persons with an identification card, and primary caregivers will continue to access medical marijuana at locations throughout the City consistent with the CUA and MMPA. Qualified persons, within limited restrictions relating to large-scale growing operations, can also continue to cultivate medical marijuana for their personal use consistent with the CUA and MMPA.

C. *Scenic Highway: Projects that may result in damage to scenic resources within a duly designated scenic highway.*

The proposed ordinance does not affect what type of buildings can or cannot be built and will therefore not damage scenic resources within a duly designated scenic highway. The proposed ordinance merely affects operation within existing structures that are already built out. Without existing medical marijuana businesses, the proposed ordinance would have a positive potential impact on the structures and any potential surrounding scenic highway as medical marijuana facilities are often painted with window coverings that obstruct view within buildings contrary to the Commercial Corner Ordinance as well as Design Guidelines associated with many Specific Plans and Supplemental Use Districts.

D. *Hazardous Waste Site:* *Projects located on a site or facility listed pursuant to California Government Code 65962.5.*

The proposed ordinance does not supersede any existing regulation on hazardous material site because the proposed ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, the relation of these structures to hazardous waste sites would not change. New structures are subject to project-specific environmental analysis and mitigated accordingly.

E. *Historical Resources:* *Projects that may cause a substantial adverse change in the significance of an historical resource.*

The proposed ordinance would not cause an adverse change in the significance of a historical resource as defined in State CEQA 15064.5. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, the relation of these structures as a historic resource would not change. New structures are subject to project-specific environmental analysis and mitigated accordingly.

V. ADDITIONAL FACTUAL SUPPORT

Below is a consideration of all categories on the Initial Study Checklist to demonstrate further that the proposed ordinance qualifies for the listed categorical exemptions:

A. *Aesthetics*

This proposed ordinance will have zero to minimal aesthetic environmental effects. The prohibition of medical marijuana businesses will not alter any scenic vistas. Scenic vistas are generally defined as panoramic public views to natural features, including views of the ocean, striking or unusual natural terrain, or unique urban or historic features.

The proposed ordinance would not impact these scenic resources because it merely affects activities operating within existing structures that are already built out. The proposed ordinance would have a positive potential impact on the structures themselves and surrounding environment as medical marijuana businesses are often painted with window coverings that obstruct view within buildings contrary to the Commercial Corner Ordinance as well as Design Guidelines associated with many Specific Plans and Supplemental Use Districts.

B. *Agricultural*

The proposed ordinance prohibits medical marijuana businesses, and does not impact agricultural uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Agricultural. Therefore, the proposed ordinance will not impact agricultural uses. After adoption of the proposed ordinance, these uses can continue operating in the same fashion as they did prior to adoption.

C. *Air Quality*

The proposed ordinance would not conflict with or obstruct the implementation of the SCAQMD or congestion management plan, violate any air quality standard, or contribute substantially to an existing or projected air quality violation. There would not be cumulatively considerable net increases of any criteria pollutant for which the air basic is in non-attainment. Moreover, the proposed ordinance would not expose any sensitive receptors to substantial pollutant concentrations, nor create any odors.

The proposed ordinance does not result in any significant impacts on traffic (as impacts are close to *de minimis*), as set forth below in the Transportation/Circulation Section below. Therefore, air quality impacts from any increase in traffic would be similarly less than significant. Finally, because air quality impacts would be substantially less than significant, it is expected that any greenhouse gas contribution would also be less than significant.

D. *Biological Resources*

The proposed ordinance will not create changes in conditions that could yield an incremental increase in potential impacts to any species identified as a candidate, sensitive, or special status species. There are no biological resources, including riparian habitat, or other sensitive natural community or federally protected wetlands, native resident or migratory fish/wildlife species that would be impacted. The proposed ordinance would not result in direct removal, filling, or hydrological interruption to any resources. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on biological resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

E. *Cultural Resources*

The proposed ordinance would not cause an adverse change of a historical resource as defined in State CEQA 15064.5. The proposed ordinance will not cause an adverse change in significance of an archaeological resource, paleontological resource, site, or unique geologic feature, or any human remains. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on cultural resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

F. *Geology and Soils*

The proposed ordinance in and of itself will not pose any risks of human injury and property damage due to potential regional earthquakes. As is common in the Southern California region, there will be continued risks of human injury and property damage because of potential regional earthquakes. While generally the potential exists for geologic hazards due to geologic and seismic conditions throughout the City, this specific project proposes no changes that would alter these conditions because the proposed

ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on geology and soils. New structures are subject to project-specific environmental analysis and mitigated accordingly.

G. *Hazards and Hazardous Materials*

The proposed ordinance would not result in the routine transport, use, production or disposal of hazardous materials. The proposed ordinance would merely prohibit an activity from operation and would not involve the use of potentially hazardous materials that could create a significant public hazard through the accidental release of hazardous materials into the environment. Medical marijuana businesses do not involve the transport or use of hazardous materials. Therefore, the prohibition of this activity would not result in any change from the baseline conditions.

H. *Hydrology and Water Quality*

The proposed ordinance would not violate any water quality standards or waste discharge requirements, nor would it have a substantial impact on groundwater supplies or recharge. The proposed ordinance would not substantially deplete groundwater supplies or interfere with groundwater recharge.

The proposed ordinance would not create or contribute to runoff water or substantially degrade water quality. The proposed ordinance is not near a levee or dam, and thus would not threaten to expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.

This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on hydrology and water quality. New structures are subject to project-specific environmental analysis and mitigated accordingly.

I. *Land Use and Planning*

Neighborhoods continue to complain daily of the disruption and general safety issues presented by the operation of medical marijuana businesses. By prohibiting such businesses as enumerated activities, the proposed ordinance has a positive impact on land use and planning in that it furthers the following goals and objectives of the General Plan:

- Housing Element goal 5A to create "a livable City for existing and future residents and one that is attractive to future investment."
- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."

- Economic Development goal 7.2 to "establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality."
- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

Additionally, the proposed ordinance upholds the City's right to prohibit medical marijuana businesses due to good zoning practice in that medical marijuana businesses are not an enumerated use in the Zoning Code. The Los Angeles Municipal Code limits uses to those expressly enumerated in the Zoning Code. Medical marijuana businesses are not an allowed, enumerated use of land in any zone in the City. Therefore, the proposed ordinance has a positive impact on land use and planning.

J. *Mineral Resources*

The proposed ordinance would not result in the loss of availability of a known mineral resource or locally-important mineral resource recovery site. This is because the proposed ordinance merely affects land use activities within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on mineral resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

K. *Noise*

The proposed ordinance would not result in the exposure of persons to or generation of noise in levels in excess of standard levels. Furthermore, the proposed ordinance would not result in the exposure of people to or generation of excessive ground borne vibration or ground borne noise levels or create a substantial periodic or permanent increase in ambient noise levels. In fact, the only potential impact is a reduction of noise. However, this would be very minimal as the noise associated with this type of activity mostly occurs indoors and is not audible outside the structure. The proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on noise. New structures are subject to project-specific environmental analysis and mitigated accordingly.

L. *Population and Housing*

The proposed ordinance would not impact the distribution of population and housing Citywide. The proposed ordinance prohibits medical marijuana businesses as an activity, which does not impact residential uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Residential. Therefore, the proposed ordinance will not impact residential uses. After adoption of the proposed ordinance, residential uses can continue operating in the same fashion as they did prior to adoption.

M. *Public Services*

The impact on public services will be positive. Neighborhoods continue to complain daily of the disruption and general safety issues presented by the operation of medical marijuana businesses. As set forth previously, by banning operation of such businesses, the demand on police to respond to such appeals will decrease.

N. *Recreation*

The proposed ordinance would not impact the public recreational facilities throughout the City. The proposed ordinance prohibits medical marijuana businesses as a use, which does not impact recreational uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Public Facilities or Open Space, where public recreational facilities typically occur. Therefore, the proposed ordinance will not impact recreational uses. After adoption of the proposed ordinance, public recreational facilities can continue operating in the same fashion as they did prior to adoption.

O. *Transportation/Circulation*

The proposed ordinance would not cause a significant impact on traffic. The proposed ordinance would not exceed a level of service standard established by the county congestion management agency for designated roads or highways. The proposed ordinance would not result in a change in air traffic patterns, nor would it impact street design. The proposed ordinance does not regulate any public thoroughfare and does not include any guidelines that would conflict with adopted policies, plans or programs supporting alternative transportation.

This is because the proposed ordinance prohibits a specific activity. There is no expansion of allowable uses that would promote an increase in traffic. There may be a temporary and immediate time in which there is an increase in vacant storefronts and vacant facilities previously serving as large growing operations as operations close. This timeframe is seen as temporary because uses that are permitted by right or with discretionary approval with CEQA review will ultimately occupy the space. If the formerly vacant storefronts and vacant facilities previously serving as large growing operations reopen with uses that are by right or allowed by discretionary approval with CEQA review, traffic may or may not increase, depending on the new use occupying the former medical marijuana facilities. It is difficult to speculate on the impact on traffic due to unknown future variables; however it is expected to be less than significant due to the short time period of expected impacts from vacancies and the fact that any more intense use of the properties that could cause traffic impacts not already allowed by right would be separately addressed by further CEQA review.

Furthermore, while the exact impact on traffic cannot be estimated with certainty, it is anticipated to be less than significant considering that 1) traffic generated by the access to existing medical marijuana businesses is believed to be spread throughout the day and are thus not concentrated during peak traffic hours; 2) the ordinance does not result in additional uses after its adoption that would promote an increase in traffic; (3) existing marijuana business are disbursed throughout the City; and (4) the ordinance excludes from its definition of medical marijuana business, the following, with the result that

the ordinance preserves the limited State law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with State law::

> (a) Any dwelling unit where a maximum of three (3) or fewer qualified patients, persons with an identification card, and/or primary caregivers process or associate to collectively or cooperatively cultivate marijuana on-site for their own personal medical use or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq.;
>
> (b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;
>
> (c) The location of any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or
>
> (d) Any vehicle during only that time reasonably required for use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport, distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765. (§ 45.19.6.1 Definitions.)

The net result of traffic conditions is minimal or non-existent as qualified patients, persons with an identification card, and primary caregivers spread to locations throughout the City to access and/or cultivate medical marijuana, consistent with the CUA and MMPA.

Finally, there is a possibility that traffic may be displaced to other areas as qualified patients, persons with an identification card, or primary caregivers travel to obtain and/or cultivate medical marijuana in

new areas. This will not result in an increase in traffic, but rather a change in traffic patterns. Any such displacement effect is expected to be negligible, as the locations of previous medical marijuana businesses were spread throughout the City, and the qualified patients, persons with an identification card, and primary caregivers will spread to locations throughout the City to access and cultivate medical marijuana, consistent with the CUA and MMPA. Likewise, qualified patients, primary caregivers, and personal cultivation operations are inherently spread throughout the City, as there is no evidence of any specific concentrations in a part of the City.

P. *Utilities*

The proposed ordinance would not encourage nor limit construction, but rather prohibit activity that would otherwise not be allowed. The proposed ordinance would not exceed wastewater treatment requirements of the applicable regional water quality control board, nor require the construction of new water or wastewater treatment facilities. The proposed ordinance would not require the construction of new storm water drainage facilities or expansion of existing facilities. The proposed ordinance would not have an effect on water supplies, nor affect wastewater treatment. Moreover, the proposed ordinance would not have any solid waste disposal needs or generate any solid waste disposal itself.

This is because proposed ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new significant impact on utilities. New structures are subject to project-specific environmental analysis and mitigated accordingly. The only potential impact would be a temporary reduction in demand of the utilities as some operations close. However, this change is seen as temporary as uses which are allowed by-right or with discretionary review and CEQA review would eventually occupy these spaces and have a comparable demand on utilities.

Q. *Mandatory Findings of Significance*

The proposed ordinance would not substantially degrade environmental quality, substantially reduce fish or wildlife habitat, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plan or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on the aforementioned topics. New structures are subject to project-specific environmental analysis and mitigated accordingly.

As noted previously in the Exceptions to the Use of Categorical Exemptions section, the proposed ordinance would not have a cumulatively considerable impact.

PREPARED BY:
CITY OF LOS ANGELES, DEPARTMENT OF CITY PLANNING
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5-15-12
DATE

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EXHIBIT 3

COUNTY CLERK'S USE

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 360
LOS ANGELES, CALIFORNIA 90012

CITY CLERK'S USE

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

(California Environmental Quality Act Section 15062)

Filing of this form is optional. If filed, the form shall be filed with the County Clerk, 12400 E. Imperial Highway, Norwalk, CA 90650, pursuant to Public Resources Code Section 21152 (b). Pursuant to Public Resources Code Section 21167 (d), the filing of this notice starts a 35-day statute of limitations on court challenges to the approval of the project. Failure to file this notice with the County Clerk results in the statute of limitations being extended to 180 days.

LEAD CITY AGENCY	COUNCIL DISTRICT
City Council/Department of City Planning	ALL

PROJECT TITLE	LOG REFERENCE
Ordinance Concerning Regulation of Medical Marijuana	CF 08-0923-S16, CF 11-1737, CF 11-1737-S1, ENV 2012-1273-CE

PROJECT LOCATION
Citywide

DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:
An ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana.

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT, IF OTHER THAN LEAD CITY AGENCY:

CONTACT PERSON	AREA CODE	TELEPHONE NUMBER	EXT.
Deborah Kahen	213	978-1202	

This is to advise that on the City of Los Angeles has made the following determinations:

EXEMPT STATUS: (Check One)

	STATE CEQA GUIDELINES	CITY CEQA GUIDELINES
☐ MINISTERIAL	Sec. 15268	Art. II, Sec. 2b
☐ DECLARED EMERGENCY	Sec. 15269	Art. II, Sec. 2a (1)
☐ EMERGENCY PROJECT	Sec. 15269 (b) & (c)	Art. II, Sec. 2a (2) & (3)
☑ CATEGORICAL EXEMPTION	Sec. 15300 *et seq.*	Art. III, Sec. 1

Class 1,5,8,21 Category 15301,15305,15308,15321 (State CEQA Guidelines)

☑ OTHER (See Public Resources Code Sec. 21080 (b) and set forth state and City guideline provision.

State CEQA Guidelines Sec. 15061(c)(2) and City CEQA Guidelines Art. II, Section 2m.

JUSTIFICATION FOR PROJECT EXEMPTION:

The ordinance would have no direct or reasonably foreseeable indirect physical impact upon the environment. Also, the ordinance solely impacts the operation of existing private structures involving negligible or no expansion of use; is a minor alteration in land use limitations; is an action to assure the maintenance, enhancement, or protection of the environment; and is an action to enforce a law, general rule, standard, and objective. See CEQA Narrative found in the above-noted files.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.

SIGNATURE	TITLE	DATE
Alan Bell	Deputy Director	5-15-12

FEE:	RECEIPT NO.	REC'D. BY	DATE

DISTRIBUTION: (1) County Clerk, (2) City Clerk, (3) Agency Record

Rev. 11-1-03

EXHIBIT 4

DEPARTMENT OF CITY PLANNING
FINDINGS AND RECOMMENDATION
PURSUANT TO CITY CHARTER § 556 AND §558(B)(2)

CITY PLANNING COMMISSION		**CASE NO:**	Special Item
DATE:	May 24, 2012	**CEQA:**	ENV-2012-1273-CE
TIME:	8:30 a.m.	**COUNCIL FILE:**	11-1737 and 11-1737-S1
PLACE:	Van Nuys City Hall Council Chamber 2nd Fl. 14410 Sylvan Street Van Nuys, California 91401	**LOCATION:**	Citywide
		COUNCIL DISTRICT:	All
		PLAN AREAS:	All

PUBLIC HEARING REQUIRED

SUMMARY: An ordinance proposed by the City Attorney repealing and replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code in response to recent appellate court decisions concerning medical marijuana.

MICHAEL LOGRANDE
Director of Planning

ALAN BELL, AICP
DEPUTY DIRECTOR OF PLANNING

CHARLES J. RAUSCH, JR,
SENIOR CITY PLANNER,
OFFICE OF ZONING ADMINISTRATION
Telephone: (213) 978-1306

RECOMMENDED ACTIONS:

1. **Recommend** that the City Council Determine that the ordinance is exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA Narrative and draft Notice of Exemption attached as Attachments 2 and 3 to the "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code In Response To Recent Appellate Court Decisions Concerning Medical Marijuana" (City Attorney Report) prepared and transmitted by the Office of the City Attorney.

2. **Recommend** that the City Council Direct that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.

3. **Adopt** the Findings pursuant to City Charter §556 and §558(b)(2), stated below, showing that adoption of the ordinance is in substantial conformance with the purposes, intent and provisions of the General Plan (City Charter § 556), and will be in conformity with public

necessity, convenience, general welfare and good zoning practice (City Charter §558(b)(2)); and

4. **Concur in the Recommendation of the City Attorney** to approve the draft ordinance attached as Attachment 1 to the City Attorney Report.

BACKGROUND:

The Department of City Planning has reviewed the City Attorney Report, including the draft ordinance attached as Attachment 1 to that Report.

The draft ordinance would: (1) repeal and replace Article 5.1 of Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC) in response to recent appellate court decisions by prohibiting medical marijuana businesses; and (2) preserve the limited state law medical marijuana criminal immunities consistent with the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance. The draft ordinance would ban medical marijuana businesses. The draft ordinance excludes from the definition of medical marijuana business: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA.

FINDINGS:

1. **The action is in substantial conformance with the purposes, intent and provisions of the General Plan. (City Charter § 556.)**

Medical marijuana business is not an enumerated use in the Zoning Code. Further, given the ruling of the Court of Appeal in *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011), the Zoning Administrator does not now have the affirmative right to add this as an enumerated use. The Zoning Code is an essential implementation tool of the General Plan. The proposed ordinance acts to confirm that medical marijuana businesses are a disallowed activity. It is therefore fully consistent with the General Plan.

Criminal activity, including robberies and other crimes are associated with medical marijuana businesses in the City. Neighborhoods and businesses complain about the disruption and public safety issues presented by medical marijuana businesses in the City. By banning medical marijuana businesses, the proposed ordinance furthers the following goals and objectives of the General Plan:

- Housing Element goal 5A to create "a livable City for existing and future residents and one that is attractive to future investment."
- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."
- Economic Development goal 7.2 to "establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality."
- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

2. Adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. (City Charter §558(b)(2).)

Conformity With Public Necessity: The proposed ordinance is in conformity with public necessity because it: (1) prohibits rather than authorizes medical marijuana businesses as required by the ruling by the California Court of Appeal in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011); (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action; and (4) preserves the limited state law medical marijuana criminal immunities consistent with the CUA and MMPA, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

Prohibits Rather Than Authorizes Medical Marijuana Businesses As Required By *Pack*: The *Pack* court held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the Los Angeles Municipal Code (LAMC), are preempted by the federal Controlled Substances Act (CSA). The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The proposed ordinance is in conformity with public necessity required by *Pack* because it prohibits rather than authorizes medical marijuana businesses.

Required To Prevent the Continuing Drain of Litigation Against The City; Ends The Unregulated Proliferation Of Medical Marijuana Businesses In Los Angeles Without The Likelihood of Substantial Further Legal Action: Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in the City in violation of the City's Zoning Code. Since that time, an unknown number of these businesses, estimated to exceed 500, continue to open and operate in Los Angeles, all in violation of the City's Zoning Code. The Los Angeles Police Department has reported that, as the number of marijuana dispensaries and commercial growing operations proliferate, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for

non-medical and recreational uses.

The City's prior comprehensive regulatory framework, enacted in January 2010 as Medical Marijuana Ordinance 181069 (MMO), amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530 (TUO), became the subject of nearly two years of intensive and voluminous litigation. More than a dozen legal theories were advanced against the City by more than one hundred plaintiffs in an effort to obtain a declaration that these measures were legally invalid. The protracted litigation was a substantial drain of City resources and personal. The proposed ordinance is in conformity with public necessity because it prevents the continuing drain of litigation against the City and ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action.

Preserves the Limited State Law Medical Marijuana Criminal Immunities Codified in the Compassionate Use Act and Medical Marijuana Program Act: The CUA, adopted by the voters in 1996, and MMPA, enacted by the State Legislature in 2003, provide California's qualified patients, persons with an identification card, and their primary caregivers, with limited immunities to specified criminal prosecutions under State law for the purpose of enabling access to marijuana for medical purposes. The proposed ordinance excludes from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed ordinance is in conformity with public necessity by preserving the limited state law medical marijuana criminal immunities consistent with state law.

Conformity With Public Convenience: The proposed ordinance is in conformity with public convenience because it confirms and restores the rule of law, as expressed by the *Pack* court, in Los Angeles. Further, the ordinance exempts from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed ordinance is in conformity with public convenience by preserving the limited state law medical marijuana criminal immunities, and by not prohibiting seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana, consistent with in state law.

Conformity With General Welfare: The proposed ordinance is in conformity with general welfare because it: (1) prohibits medical marijuana businesses which are associated with criminal activity, including murders, robberies, and other crimes; (2) resolves neighborhoods and business complaints about disruption and public safety; (3) prevents the continuing drain of litigation against the City; (4) ends the unregulated proliferation of medical marijuana businesses in Los Angeles without creating the likelihood of substantial further legal action; and (5) and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with in state law.

Conformity With Good Zoning Practice: The proposed ordinance is in conformity with good zoning practice by prohibiting medical marijuana businesses which are not an enumerated use in the Zoning Code. The LAMC limits uses to those expressly enumerated in the Zoning Code. Medical marijuana businesses are not an allowed, enumerated use in any zone in the City.

COUNTY CLERK'S USE

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 360
LOS ANGELES, CALIFORNIA 90012
CALIFORNIA ENVIRONMENTAL QUALITY ACT

CITY CLERK'S USE

NOTICE OF EXEMPTION

(California Environmental Quality Act Section 15062)

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City Council/Department of City Planning	ALL

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CONTACT PERSON	AREA CODE	TELEPHONE NUMBER	EXT.
Deborah Kahen	213	978-1202	

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Class 1,5,8,21 Category 15301,15305,15308,15321 (State CEQA Guidelines)

☑ OTHER (See Public Resources Code Sec. 21080 (b) and set forth state and City guideline provision.

State CEQA Guidelines Sec. 15061(c)(2) and City CEQA Guidelines Art. II, Section 2m.

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The ordinance would have no direct or reasonably foreseeable indirect physical impact upon the environment. Also, the ordinance solely impacts the operation of existing private structures involving negligible or no expansion of use; is a minor alteration in land use limitations; is an action to assure the maintenance, enhancement, or protection of the environment; and is an action to enforce a law, general rule, standard, and objective. See CEQA Narrative found in the above-noted files.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.

SIGNATURE	TITLE	DATE
Allan Ball	Deputy Director	5-15-12

FEE:	RECEIPT NO.	REC'D. BY	DATE

DISTRIBUTION: (1) County Clerk, (2) City Clerk, (3) Agency Record

Rev. 11-1-03

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) NARRATIVE:

ENV 2012-1273-CE

I. PROJECT DESCRIPTION

A proposed ordinance (Appendix A) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana.

II. PROJECT HISTORY

In January 2010, the City established a comprehensive regulatory framework to balance the uncontrolled proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana consistent with State law as codified in the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), and public safety. The regulatory program, known as Medical Marijuana Ordinance 181069 (MMO), added Article 5.1 to Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC). The MMO was amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530 (TUO).

The MMO and its amendments became the subjects of more than two years of intense and voluminous litigation. More than a dozen legal theories were advanced against the City by more than one hundred plaintiffs in an effort to obtain a declaration that these measures were legally invalid. One such legal theory was that the MMO was invalid as a land use measure that required review by the City Planning Commission (CPC) that was never obtained. Although the Superior Court issued a narrow injunction against pieces of the MMO in December 2010, on October 14, 2011, the Superior Court issued a ruling in which it upheld and refused to enjoin the TUO.

Beginning at the same time, in late 2011, the California appellate courts issued an array of opinions, interpreting the state's medical marijuana laws which drastically altered the legal landscape. Cities and counties throughout California, including Los Angeles, have been responding to these opinions by considering new legislation to thread the gauntlet of state and federal marijuana laws.

In the first of these opinions, issued on October 4, 2011, just prior to the favorable ruling by the Superior Court, the Second Appellate District of the California Court of Appeal, whose decisions bind the City of Los Angeles, ruled in the case of *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070. The *Pack* decision held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal Controlled Substances Act (CSA), because the CSA bans marijuana for all purposes. *Pack* disables the City from proceeding with the MMO or TUO and from enacting new comprehensive rules with affirmative regulations unless

and until the California Supreme Court overturns or substantially modifies the *Pack* appellate court ruling.

In January 2012, the California Supreme Court granted review of *Pack*, as well as review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center* (4th Dist., 2011) 200 Cal.App.4th 885 and *People v. G3 Holistic*, 2011 Cal.App.Unpub.LEXIS 8634, both recognizing that cities may properly ban medical marijuana businesses consistent with the CUA and MMPA.

In February 2012, the appellate courts ruled in the cases of *People v. Colvin* (2nd Dist. 2012) 203 Cal.App.4th 1029, and *City of Lake Forest v. Evergreen Holistic Collective* (4th Dist. 2012) 203 Cal.App.4th 1413. *Colvin* held that the activity of collective cultivation includes the act, by a qualified patient, of transporting marijuana sufficient to immunize the patient from prosecution under the state's marijuana laws for the transportation of marijuana grown off-site to a dispensary. *Evergreen* held that a dispensary may only locate where its members collectively and cooperatively cultivate their marijuana, a dispensary that stocks marijuana grown off-site would not qualify for protection under the MMPA, and state law preempts local zoning prohibition of medical marijuana dispensaries. These additional rulings are the subject of requests for depublication and California Supreme Court review.

In March 2012, the Court of Appeal ruled in the case of *People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512 that the MMPA does not immunize marijuana sales activity.

The proposed ordinance, consistent with State and Federal law, including *Pack* and the subsequent decisions issued by California appellate courts, would ban medical marijuana businesses. The proposed ordinance preserves the limited State law medical marijuana criminal immunities by excluding from the definition of medical marijuana business, the following: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA. The proposed ordinance thereby preserves the limited State law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with State law.

III. EXISTING ENVIRONMENT

In January 2010, the City adopted Ordinance 181069, adding Chapter IV, Art. 5.1.§45.19.6 et seq., known as the Medical Marijuana Ordinance (MMO). The MMO limits, among other things, the location of collectives; limits the number of collectives; creates a process by which collectives can apply for status as one of the limited number of allowed collectives; and imposes a number of operating requirements.

By Preliminary Injunction Order (PI Order) issued December 10, 2010, modified nunc pro tunc January 10, 2011, the Los Angeles Superior Court ruled, among other matters, that the City improperly relied upon registration under the City's prior Interim Control Ordinance (ICO) as a basis to distinguish between collectives.[1] The court concluded that reliance upon the ICO registration would fail the rational basis test and violate equal protection under the United States and California Constitutions; the court suggested to the City that a date certain for the establishment of the collective might be a lawful grandfathering alternative.

The City responded to the PI Order by Temporary Urgency Ordinance 181530 (TUO) adopted by the City Council in January 2011. The TUO does not rely upon registration under the ICO, but instead limits dispensaries based upon, among other criteria, a drawing from all dispensaries that commenced operating in the City by September 14, 2007. (TUO Sec. 3.) It requires all entities seeking to participate in the drawing to register with the City Clerk no later than February 18, 2011. TUO Sec. 51(a)((1)(2). Two hundred thirty three (233) businesses submitted documentation to the City Clerk by February 18, 2011 ("TUO List"). In analyzing their applications, the City tentatively concluded that only 50-80 of the applicants of the 233 applicants appeared to comply with the application requirements and could move on to the next registration steps. However, the next registration steps, including a lottery, a cap, moving to compliant locations, and the other registration protocols of the TUO, have not been implemented due to the *Pack* litigation.

In addition to the above, the Office of Finance maintains a list of individuals or entities who have obtained a business tax registration certificate from the City of Los Angeles to pay tax on receipts

[1] On August 1, 2007, the Los Angeles City Council passed Interim Control Ordinance 179027 (ICO). The ICO found that the spirit and intent of the Compassionate Use Act has been exploited and abused for both profit and recreational drug abuse by many of the medical marijuana dispensaries in the City. The ICO prohibited the establishment and operation of new medical marijuana dispensaries pending the earlier of the adoption of a permanent ordinance or the passage of one year. (ICO at § 2.) The ICO prohibition did not apply to dispensaries established before September 14, 2007, the effective date of the ICO, if the owner or operator of the dispensary timely submitted a form and additional documentation designated by the Office of the City Clerk. The City Clerk maintains a list of 182 businesses which submitted documentation with the City Clerk pursuant to the ICO.

Section 4 of the ICO provided an exemption from its prohibitions in cases of hardship. The City Clerk assigned each hardship application a separate Council file number. The City Clerk estimates 772 Council files exist relating to separate hardship applications. A handful of these files were acted upon and denied by the Council because there was no support for the false claim of hardship. The remaining Council hardship files expired with the advent of the City's permanent ordinance. No inquiry was ever undertaken to confirm the existence or veracity at any time of these filers.

attributable to medical marijuana ("Certificate List"). It is the policy of the City's tax collection entity, known as the Office of Finance, to provide a business tax registration certificate to, and to collect taxes from, all who apply, without question or verification. As of November 1, 2011, 372 individuals and entities are on the Certificate List. A copy of the Certificate List, dated Nov. 1, 2011 is available in the case file.

It is the City's best estimate that neither the TUO List nor the Certificate List represents the current actual physical environment. It has been the City's experience that the various lists are populated, in part, by individuals or entities who undertook the effort to get on the list in order to attempt to qualify at some future date for permission to operate in the City, but who were not in fact operating a dispensary. It is also the City's experience that its medical marijuana businesses, in part because they remain an unauthorized use citywide and also because they are subject to federal enforcement scrutiny, open, close, and reopen to avoid detection. Nonetheless, as set forth below, the two lists can serve as a rudimentary basis for estimating current conditions.

It has been, and remains, infeasible for the City to undertake to verify that each of the dispensaries on the TUO and Certificate Lists actual physically exist.[2] The efforts by dispensaries to evade enforcement actions cause opening, closure, and relocation at random. This makes it virtually impossible for the City to ascertain at any given time the actual number of dispensaries which physically exist in the City. Nonetheless, the City, based on the above information, conservatively estimates that the actual number of dispensaries which physically exist in the City to be no more than 372—the number which have sought business tax registration certificates. The actual number of dispensaries is likely significantly less than 372 in light of the fact that a lesser number—233—registered under the TUO. In using these numbers to estimate current actual physical conditions, the City in no way concedes that any particular dispensary listed actually does exist, or came into existence at any particular time.

IV. ENVIRONMENTAL REVIEW UNDER CEQA

Staff has concluded that the following CEQA exemptions are appropriate for the proposed ordinance:

A. 14 California Code of Regulations ("State CEQA Guidelines") Section 15060(c)(2) exempts an activity that *"will not result in a direct or reasonably foreseeable indirect physical change in the environment"*; and

City of Los Angeles Environmental Quality Act Guidelines, Article II, Section 2, Class m consists of *"the adoption of ordinances that do not result in impacts on the physical environment."*

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[2] The ICO registrant and hardship applicant lists are simply too old to be reliable for any purpose. By way of example, when the City endeavored in the fall of 2009 to confirm the physical status of the 182 ICO registrants, it concluded that only 100 – 130 remained at that time.

Under the California Supreme Court's ruling in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328, an agency has the discretion to decide the environmental baseline subject to support by substantial evidence. For the proposed ordinance, the environmental baseline currently consists of no legally entitled medical marijuana business that the proposed ordinance will now restrict. Specifically, medical marijuana businesses are not an allowed, enumerated use of land in any zone in the City. The LAMC limits uses to those expressly enumerated in the Zoning Code. Any existing medical marijuana businesses are operating in violation of the Zoning Code. Indeed, the Superior Court in the consolidated case *Americans for Safe Access v. City of Los Angeles*, Lead Case No. BC433942, expressly held that medical marijuana businesses in Los Angeles have obtained no vested rights, while appellate courts elsewhere have confirmed that any medical marijuana business opened in the absence of a land use approval authorizing medical marijuana facilities are illegal (see, *e.g.*, *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 868). Therefore, because currently no medical marijuana businesses are operating in conformance with the Zoning Code and should not be existing uses under the law, for purposes of CEQA the City exercise its discretion to exclude them from the environmental baseline.

The proposed amendments restrict medical marijuana businesses consistent with *Pack* and the Zoning Code. Because the existing baseline of conditions is that existing medical marijuana businesses are operating in violation of the Zoning Code and the proposed ordinance would specifically make medical marijuana businesses a disallowed activity, the proposed ordinance would have no direct or reasonably foreseeable indirect physical change or impact upon the environment.

Should, contrary to the City's determination above, the baseline be construed as including medical marijuana businesses, the following CEQA exemptions are appropriate:

B. State CEQA Guidelines Section 15301 consists of "*the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 1 consists of "*the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.*"

The impact of the proposed ordinance would be to change the operation of a medical marijuana business, which is an operation of a private structure, to another use allowed by right or with further discretionary action and CEQA analysis. Because the proposed ordinance is prohibiting, not allowing the proliferation of, an activity not enumerated in the Zoning Code, the proposed ordinance solely impacts "the operation... of existing... private structures...involving negligible or

no expansion of use beyond that" "existing at the time of the lead agency's determination" or "previously existing."

C. State CEQA Guidelines Section 15305 consists of "*minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density...*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 5 consists of "*minor alterations in land use limitations in areas with less than a 20% slope which do not result in any changes in land use or density...*"

The proposed ordinance will prohibit an activity that is not enumerated in the Zoning Code. It would prohibit medical marijuana businesses, which is less than a minor alteration in land use limitation, in areas with less than a 20% slope. It does not result in any changes in land use and density because the ultimate result is that the exact same enumerated uses that are allowed prior to the adoption of the proposed ordinance would be permitted after the adoption of the proposed ordinance. There may be an immediate and temporary change from baseline due to closure of medical marijuana businesses; however no significant change is anticipated because other uses allowed by right or allowed with further discretionary action and CEQA analysis will be eligible to operate in the same space. The ultimate result is that the exact same enumerated uses that are allowed prior to the adoption of the proposed ordinance would be permitted after the adoption of the proposed ordinance. Therefore, the baseline of existing conditions will have a net result of being the same after the proposed ordinance is adopted.

D. State CEQA Guidelines Section 15308 consists of "*actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption*"; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 8 consists of "*actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.*"

By banning medical marijuana businesses, the proposed ordinance assures the maintenance, enhancement and protection of the environment in the following ways:

- It enhances the environment by prohibiting rather than authorizing medical marijuana businesses as required by the ruling in *Pack*. The *Pack* court held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the LAMC, are preempted by the federal CSA. The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The

proposed ordinance is in conformity with public necessity and protection of the environment where the regulatory process involves procedures for protection of the environment in that it maintains conformity with the *Pack* rulings;

- It protects the environment by banning an activity that is associated with criminal activity. Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in violation of the City's Zoning Code. Since that time, an unknown number of these businesses, estimated to exceed 500, continue to open and operate in Los Angeles, each in violation of the Zoning Code. The Los Angeles Police Department has reported that, as the number of marijuana businesses have proliferated, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses. Neighborhoods and businesses complain about the disruption and public safety issues presented by medical marijuana businesses in the City. By banning medical marijuana businesses, the proposed ordinance maintains the health and safety of the environment which therefore protects the environment;

- It protects and maintains the environment of the city by minimizing the continuing drain of litigation and police services against the City which impacts the City's financial health in its entirety. The City's prior comprehensive regulatory framework, enacted in January 2010 as the Medical Marijuana Ordinance 181069, amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530, became the subject of nearly two years of intensive and voluminous litigation. The protracted litigation was a substantial drain of City resources and personnel. The proposed ordinance promotes protection of the environment because it prevents the continuing drain of litigation and police services; and

- It assures the maintenance and protection of the environment by not changing access to and cultivation for personal use of medical marijuana by qualified patients, persons with an identification card, or primary caregivers, consistent with State law. Under the proposed ordinance, qualified patients, persons with an identification card, or primary caregivers will continue to have access to and be allowed to cultivate for personal use medical marijuana consistent with State law as codified in the CUA and MMPA. The CUA, adopted by the voters in 1996, and MMPA, enacted by the State Legislature in 2003, provide California's qualified patients with serious medical conditions, persons with an identification card, and their primary caregivers, with limited immunities to specified criminal prosecutions under State law for the purpose of enabling access to marijuana for medical purposes. The proposed ordinance excludes from the definition of medical marijuana business locations and vehicles used in strict conformity with State law.

E. State CEQA Guidelines Section 15321 consists of *"Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: (1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement; (2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective"*; and

City of Los Angeles Environmental Quality Act Guidelines, Article III, Class 21 consists of *"actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: 1) The direct referral of a violation of a lease, permit, license, certificate or other entitlement for use or of a general rule, standard of objective to the Attorney General, District Attorney or City Attorney, as appropriate for judicial enforcement. 2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate or other entitlement for use or enforcing the general rule, standard or objective."*

The proposed ordinance would be the adoption of an order enforcing a law, general rule, standard and objective administered and/or adopted by the City because it confirms and restores the rule of law, expressed by the City's Zoning Code and the *Pack* court, in Los Angeles. Further, the proposed ordinance exempts from the definition of medical marijuana business, locations and vehicles used in strict conformity with State law. The proposed ordinance is in conformity with State law because it does not change access and cultivation for personal use by qualified patients, persons with an identification card, or primary caregivers to medical marijuana consistent with the CUA and MMPA.

Furthermore, operation of existing medical marijuana businesses is not an authorized land use as it is not an enumerated use in the Zoning Code. Therefore, the adoption of the proposed ordinance would indirectly revoke leases to businesses not allowed under the Zoning Code.

IV. EXCEPTIONS TO THE USE OF CATEGORICAL EXEMPTIONS

Planning staff evaluated all the potential exceptions to the use of Categorical Exemptions for the proposed ordinance and determined that none of these exceptions apply as explained below:

A. *Cumulative Impact: The exception applies when, although a particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant.*

There are no successive projects of the same type planned for the City of Los Angeles. There may be further revisions of this proposed ordinance as the California Supreme Court issues clarifications of the legal issues surrounding regulation of medical marijuana, but such revisions, if any, cannot be precisely predicted at this time. Furthermore, as set forth below in the Additional Factual Support section, any impact from the proposed ordinance is negligible or close to *de minimis,* so that any incremental effect from the proposed ordinance would not be cumulatively considerable. Finally, it should be noted that existing conditions do not include the enumeration of medical marijuana businesses in the Zoning Code. Any existing medical marijuana business is not an authorized land use. As a result, the proposed ordinance does not result in additional uses after its adoption. Therefore, there would not be any direct incremental effects from the proposed ordinance.

B. *Significant Effect Due to Unusual Circumstances: This exception applies when, although the project may otherwise be exempt, there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. Examples include projects which may affect scenic or historical resources.*

There is no reasonable possibility that the proposed ordinance will have a significant effect due to unusual circumstances. As demonstrated above, there is nothing about any impacts associated with the proposed ordinance that differ from general circumstances of the exemptions listed. There is no unusual concentration of existing medical marijuana businesses; they occur throughout the City. Therefore, the prohibition of such activity will not cause an impact due to unusual circumstances when an entire city is impacted en masse by this proposed ordinance.

Additionally, as set forth in the Additional Factual Support section, any impact from the proposed ordinance is less than significant.

Finally, the proposed ordinance will not have a significant effect on medical marijuana businesses that cease to operate as qualified patients, persons with an identification card, and primary caregivers will continue to access medical marijuana at locations throughout the City consistent with the CUA and MMPA. Qualified persons, within limited restrictions relating to large-scale growing operations, can also continue to cultivate medical marijuana for their personal use consistent with the CUA and MMPA.

C. *Scenic Highway: Projects that may result in damage to scenic resources within a duly designated scenic highway.*

The proposed ordinance does not affect what type of buildings can or cannot be built and will therefore not damage scenic resources within a duly designated scenic highway. The proposed ordinance merely affects operation within existing structures that are already built out. Without existing medical marijuana businesses, the proposed ordinance would have a positive potential impact on the structures and any potential surrounding scenic highway as medical marijuana facilities are often painted with window coverings that obstruct view within buildings contrary to the Commercial Corner Ordinance as well as Design Guidelines associated with many Specific Plans and Supplemental Use Districts.

D. *Hazardous Waste Site:* *Projects located on a site or facility listed pursuant to California Government Code 65962.5.*

The proposed ordinance does not supersede any existing regulation on hazardous material site because the proposed ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, the relation of these structures to hazardous waste sites would not change. New structures are subject to project-specific environmental analysis and mitigated accordingly.

E. *Historical Resources:* *Projects that may cause a substantial adverse change in the significance of an historical resource.*

The proposed ordinance would not cause an adverse change in the significance of a historical resource as defined in State CEQA 15064.5. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, the relation of these structures as a historic resource would not change. New structures are subject to project-specific environmental analysis and mitigated accordingly.

V. ADDITIONAL FACTUAL SUPPORT

Below is a consideration of all categories on the Initial Study Checklist to demonstrate further that the proposed ordinance qualifies for the listed categorical exemptions:

A. *Aesthetics*

This proposed ordinance will have zero to minimal aesthetic environmental effects. The prohibition of medical marijuana businesses will not alter any scenic vistas. Scenic vistas are generally defined as panoramic public views to natural features, including views of the ocean, striking or unusual natural terrain, or unique urban or historic features.

The proposed ordinance would not impact these scenic resources because it merely affects activities operating within existing structures that are already built out. The proposed ordinance would have a positive potential impact on the structures themselves and surrounding environment as medical marijuana businesses are often painted with window coverings that obstruct view within buildings contrary to the Commercial Corner Ordinance as well as Design Guidelines associated with many Specific Plans and Supplemental Use Districts.

B. *Agricultural*

The proposed ordinance prohibits medical marijuana businesses, and does not impact agricultural uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Agricultural. Therefore, the proposed ordinance will not impact agricultural uses. After adoption of the proposed ordinance, these uses can continue operating in the same fashion as they did prior to adoption.

C. *Air Quality*

The proposed ordinance would not conflict with or obstruct the implementation of the SCAQMD or congestion management plan, violate any air quality standard, or contribute substantially to an existing or projected air quality violation. There would not be cumulatively considerable net increases of any criteria pollutant for which the air basic is in non-attainment. Moreover, the proposed ordinance would not expose any sensitive receptors to substantial pollutant concentrations, nor create any odors.

The proposed ordinance does not result in any significant impacts on traffic (as impacts are close to *de minimis*), as set forth below in the Transportation/Circulation Section below. Therefore, air quality impacts from any increase in traffic would be similarly less than significant. Finally, because air quality impacts would be substantially less than significant, it is expected that any greenhouse gas contribution would also be less than significant.

D. *Biological Resources*

The proposed ordinance will not create changes in conditions that could yield an incremental increase in potential impacts to any species identified as a candidate, sensitive, or special status species. There are no biological resources, including riparian habitat, or other sensitive natural community or federally protected wetlands, native resident or migratory fish/wildlife species that would be impacted. The proposed ordinance would not result in direct removal, filling, or hydrological interruption to any resources. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on biological resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

E. *Cultural Resources*

The proposed ordinance would not cause an adverse change of a historical resource as defined in State CEQA 15064.5. The proposed ordinance will not cause an adverse change in significance of an archaeological resource, paleontological resource, site, or unique geologic feature, or any human remains. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on cultural resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

F. *Geology and Soils*

The proposed ordinance in and of itself will not pose any risks of human injury and property damage due to potential regional earthquakes. As is common in the Southern California region, there will be continued risks of human injury and property damage because of potential regional earthquakes. While generally the potential exists for geologic hazards due to geologic and seismic conditions throughout the City, this specific project proposes no changes that would alter these conditions because the proposed

ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on geology and soils. New structures are subject to project-specific environmental analysis and mitigated accordingly.

G. *Hazards and Hazardous Materials*

The proposed ordinance would not result in the routine transport, use, production or disposal of hazardous materials. The proposed ordinance would merely prohibit an activity from operation and would not involve the use of potentially hazardous materials that could create a significant public hazard through the accidental release of hazardous materials into the environment. Medical marijuana businesses do not involve the transport or use of hazardous materials. Therefore, the prohibition of this activity would not result in any change from the baseline conditions.

H. *Hydrology and Water Quality*

The proposed ordinance would not violate any water quality standards or waste discharge requirements, nor would it have a substantial impact on groundwater supplies or recharge. The proposed ordinance would not substantially deplete groundwater supplies or interfere with groundwater recharge.

The proposed ordinance would not create or contribute to runoff water or substantially degrade water quality. The proposed ordinance is not near a levee or dam, and thus would not threaten to expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.

This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on hydrology and water quality. New structures are subject to project-specific environmental analysis and mitigated accordingly.

I. *Land Use and Planning*

Neighborhoods continue to complain daily of the disruption and general safety issues presented by the operation of medical marijuana businesses. By prohibiting such businesses as enumerated activities, the proposed ordinance has a positive impact on land use and planning in that it furthers the following goals and objectives of the General Plan:

- Housing Element goal 5A to create "a livable City for existing and future residents and one that is attractive to future investment."
- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."

- Economic Development goal 7.2 to "establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality."
- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

Additionally, the proposed ordinance upholds the City's right to prohibit medical marijuana businesses due to good zoning practice in that medical marijuana businesses are not an enumerated use in the Zoning Code. The Los Angeles Municipal Code limits uses to those expressly enumerated in the Zoning Code. Medical marijuana businesses are not an allowed, enumerated use of land in any zone in the City. Therefore, the proposed ordinance has a positive impact on land use and planning.

J. *Mineral Resources*

The proposed ordinance would not result in the loss of availability of a known mineral resource or locally-important mineral resource recovery site. This is because the proposed ordinance merely affects land use activities within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on mineral resources. New structures are subject to project-specific environmental analysis and mitigated accordingly.

K. *Noise*

The proposed ordinance would not result in the exposure of persons to or generation of noise in levels in excess of standard levels. Furthermore, the proposed ordinance would not result in the exposure of people to or generation of excessive ground borne vibration or ground borne noise levels or create a substantial periodic or permanent increase in ambient noise levels. In fact, the only potential impact is a reduction of noise. However, this would be very minimal as the noise associated with this type of activity mostly occurs indoors and is not audible outside the structure. The proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on noise. New structures are subject to project-specific environmental analysis and mitigated accordingly.

L. *Population and Housing*

The proposed ordinance would not impact the distribution of population and housing Citywide. The proposed ordinance prohibits medical marijuana businesses as an activity, which does not impact residential uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Residential. Therefore, the proposed ordinance will not impact residential uses. After adoption of the proposed ordinance, residential uses can continue operating in the same fashion as they did prior to adoption.

M. *Public Services*

The impact on public services will be positive. Neighborhoods continue to complain daily of the disruption and general safety issues presented by the operation of medical marijuana businesses. As set forth previously, by banning operation of such businesses, the demand on police to respond to such appeals will decrease.

N. *Recreation*

The proposed ordinance would not impact the public recreational facilities throughout the City. The proposed ordinance prohibits medical marijuana businesses as a use, which does not impact recreational uses because medical marijuana businesses are not an enumerated use in the Zoning Code and therefore are not allowed in any zone, including Public Facilities or Open Space, where public recreational facilities typically occur. Therefore, the proposed ordinance will not impact recreational uses. After adoption of the proposed ordinance, public recreational facilities can continue operating in the same fashion as they did prior to adoption.

O. *Transportation/Circulation*

The proposed ordinance would not cause a significant impact on traffic. The proposed ordinance would not exceed a level of service standard established by the county congestion management agency for designated roads or highways. The proposed ordinance would not result in a change in air traffic patterns, nor would it impact street design. The proposed ordinance does not regulate any public thoroughfare and does not include any guidelines that would conflict with adopted policies, plans or programs supporting alternative transportation.

This is because the proposed ordinance prohibits a specific activity. There is no expansion of allowable uses that would promote an increase in traffic. There may be a temporary and immediate time in which there is an increase in vacant storefronts and vacant facilities previously serving as large growing operations as operations close. This timeframe is seen as temporary because uses that are permitted by right or with discretionary approval with CEQA review will ultimately occupy the space. If the formerly vacant storefronts and vacant facilities previously serving as large growing operations reopen with uses that are by right or allowed by discretionary approval with CEQA review, traffic may or may not increase, depending on the new use occupying the former medical marijuana facilities. It is difficult to speculate on the impact on traffic due to unknown future variables; however it is expected to be less than significant due to the short time period of expected impacts from vacancies and the fact that any more intense use of the properties that could cause traffic impacts not already allowed by right would be separately addressed by further CEQA review.

Furthermore, while the exact impact on traffic cannot be estimated with certainty, it is anticipated to be less than significant considering that 1) traffic generated by the access to existing medical marijuana businesses is believed to be spread throughout the day and are thus not concentrated during peak traffic hours; 2) the ordinance does not result in additional uses after its adoption that would promote an increase in traffic; (3) existing marijuana business are disbursed throughout the City; and (4) the ordinance excludes from its definition of medical marijuana business, the following, with the result that

the ordinance preserves the limited State law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with State law::

> (a) Any dwelling unit where a maximum of three (3) or fewer qualified patients, persons with an identification card, and/or primary caregivers process or associate to collectively or cooperatively cultivate marijuana on-site for their own personal medical use or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq.;
>
> (b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;
>
> (c) The location of any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or
>
> (d) Any vehicle during only that time reasonably required for use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport, distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765. (§ 45.19.6.1 Definitions.)

The net result of traffic conditions is minimal or non-existent as qualified patients, persons with an identification card, and primary caregivers spread to locations throughout the City to access and/or cultivate medical marijuana, consistent with the CUA and MMPA.

Finally, there is a possibility that traffic may be displaced to other areas as qualified patients, persons with an identification card, or primary caregivers travel to obtain and/or cultivate medical marijuana in

new areas. This will not result in an increase in traffic, but rather a change in traffic patterns. Any such displacement effect is expected to be negligible, as the locations of previous medical marijuana businesses were spread throughout the City, and the qualified patients, persons with an identification card, and primary caregivers will spread to locations throughout the City to access and cultivate medical marijuana, consistent with the CUA and MMPA. Likewise, qualified patients, primary caregivers, and personal cultivation operations are inherently spread throughout the City, as there is no evidence of any specific concentrations in a part of the City.

P. *Utilities*

The proposed ordinance would not encourage nor limit construction, but rather prohibit activity that would otherwise not be allowed. The proposed ordinance would not exceed wastewater treatment requirements of the applicable regional water quality control board, nor require the construction of new water or wastewater treatment facilities. The proposed ordinance would not require the construction of new storm water drainage facilities or expansion of existing facilities. The proposed ordinance would not have an effect on water supplies, nor affect wastewater treatment. Moreover, the proposed ordinance would not have any solid waste disposal needs or generate any solid waste disposal itself.

This is because proposed ordinance merely affects land use operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new significant impact on utilities. New structures are subject to project-specific environmental analysis and mitigated accordingly. The only potential impact would be a temporary reduction in demand of the utilities as some operations close. However, this change is seen as temporary as uses which are allowed by-right or with discretionary review and CEQA review would eventually occupy these spaces and have a comparable demand on utilities.

Q. *Mandatory Findings of Significance*

The proposed ordinance would not substantially degrade environmental quality, substantially reduce fish or wildlife habitat, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plan or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. This is because the proposed ordinance merely affects operations within existing structures that are already built out. Without existing medical marijuana businesses, these structures would have no new impact on the aforementioned topics. New structures are subject to project-specific environmental analysis and mitigated accordingly.

As noted previously in the Exceptions to the Use of Categorical Exemptions section, the proposed ordinance would not have a cumulatively considerable impact.

PREPARED BY:
CITY OF LOS ANGELES, DEPARTMENT OF CITY PLANNING
CHARLES J. RAUSCH, JR., ASSOCIATE ZONING ADMINISTRATOR : DK : TB

5-15-12
DATE

Allan Bell for
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DEPARTMENT OF CITY PLANNING
FINDINGS AND RECOMMENDATION
PURSUANT TO CITY CHARTER § 556 AND §558(B)(2)

CITY PLANNING COMMISSION		**CASE NO:**	Special Item
DATE:	May 24, 2012	**CEQA:**	ENV-2012-1273-CE
TIME:	8:30 a.m.	**COUNCIL FILE:**	11-1737 and 11-1737-S1
PLACE:	Van Nuys City Hall Council Chamber 2nd Fl. 14410 Sylvan Street Van Nuys, California 91401	**LOCATION:**	Citywide
		COUNCIL DISTRICT:	All
		PLAN AREAS:	All

PUBLIC HEARING REQUIRED

SUMMARY: An ordinance proposed by the City Attorney repealing and replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code in response to recent appellate court decisions concerning medical marijuana.

MICHAEL LOGRANDE
Director of Planning

ALAN BELL, AICP
DEPUTY DIRECTOR OF PLANNING

CHARLES J. RAUSCH, JR,
SENIOR CITY PLANNER,
OFFICE OF ZONING ADMINISTRATION
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RECOMMENDED ACTIONS:

1. **Recommend** that the City Council Determine that the ordinance is exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA Narrative and draft Notice of Exemption attached as Attachments 2 and 3 to the "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code In Response To Recent Appellate Court Decisions Concerning Medical Marijuana" (City Attorney Report) prepared and transmitted by the Office of the City Attorney.

2. **Recommend** that the City Council Direct that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.

3. **Adopt** the Findings pursuant to City Charter §556 and §558(b)(2), stated below, showing that adoption of the ordinance is in substantial conformance with the purposes, intent and provisions of the General Plan (City Charter § 556), and will be in conformity with public

necessity, convenience, general welfare and good zoning practice (City Charter §558(b)(2)); and

4. **Concur in the Recommendation of the City Attorney** to approve the draft ordinance attached as Attachment 1 to the City Attorney Report.

BACKGROUND:

The Department of City Planning has reviewed the City Attorney Report, including the draft ordinance attached as Attachment 1 to that Report.

The draft ordinance would: (1) repeal and replace Article 5.1 of Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC) in response to recent appellate court decisions by prohibiting medical marijuana businesses; and (2) preserve the limited state law medical marijuana criminal immunities consistent with the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance. The draft ordinance would ban medical marijuana businesses. The draft ordinance excludes from the definition of medical marijuana business: (1) any dwelling unit where a maximum of three or fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site; (2) any location during that time reasonably required for a primary caregiver to distribute, deliver or give away marijuana; (3) hospices and licensed clinics, facilities and home health agencies where qualified patients receive medical care or supportive services and designate the owner, operator, or employee designated by the owner or operator, of the clinic, facility, hospice, or home health agency as a primary caregiver; and (4) any vehicle during that time reasonably required for its use by a qualified person to transport, distribute, deliver, or give away marijuana, to the extent consistent with the CUA and MMPA.

FINDINGS:

1. **The action is in substantial conformance with the purposes, intent and provisions of the General Plan. (City Charter § 556.)**

Medical marijuana business is not an enumerated use in the Zoning Code. Further, given the ruling of the Court of Appeal in *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011), the Zoning Administrator does not now have the affirmative right to add this as an enumerated use. The Zoning Code is an essential implementation tool of the General Plan. The proposed ordinance acts to confirm that medical marijuana businesses are a disallowed activity. It is therefore fully consistent with the General Plan.

Criminal activity, including robberies and other crimes are associated with medical marijuana businesses in the City. Neighborhoods and businesses complain about the disruption and public safety issues presented by medical marijuana businesses in the City. By banning medical marijuana businesses, the proposed ordinance furthers the following goals and objectives of the General Plan:

- Housing Element goal 5A to create "a livable City for existing and future residents and one that is attractive to future investment."
- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."
- Economic Development goal 7.2 to "establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality."
- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

2. Adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. (City Charter §558(b)(2).)

Conformity With Public Necessity: The proposed ordinance is in conformity with public necessity because it: (1) prohibits rather than authorizes medical marijuana businesses as required by the ruling by the California Court of Appeal in the case of *Pack v. Superior Court*, 199 Cal.App.4th 1070 (2011); (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action; and (4) preserves the limited state law medical marijuana criminal immunities consistent with the CUA and MMPA, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

Prohibits Rather Than Authorizes Medical Marijuana Businesses As Required By *Pack*: The *Pack* court held that significant provisions of the medical marijuana ordinance of the City of Long Beach, which was modeled after Article 5.1, Chapter IV of the Los Angeles Municipal Code (LAMC), are preempted by the federal Controlled Substances Act (CSA). The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The proposed ordinance is in conformity with public necessity required by *Pack* because it prohibits rather than authorizes medical marijuana businesses.

Required To Prevent the Continuing Drain of Litigation Against The City; Ends The Unregulated Proliferation Of Medical Marijuana Businesses In Los Angeles Without The Likelihood of Substantial Further Legal Action: Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in the City in violation of the City's Zoning Code. Since that time, an unknown number of these businesses, estimated to exceed 500, continue to open and operate in Los Angeles, all in violation of the City's Zoning Code. The Los Angeles Police Department has reported that, as the number of marijuana dispensaries and commercial growing operations proliferate, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for

non-medical and recreational uses.

The City's prior comprehensive regulatory framework, enacted in January 2010 as Medical Marijuana Ordinance 181069 (MMO), amended several times, with the final substantive amendments adopted by the City Council in January 2011 by Temporary Urgency Ordinance No. 181530 (TUO), became the subject of nearly two years of intensive and voluminous litigation. More than a dozen legal theories were advanced against the City by more than one hundred plaintiffs in an effort to obtain a declaration that these measures were legally invalid. The protracted litigation was a substantial drain of City resources and personal. The proposed ordinance is in conformity with public necessity because it prevents the continuing drain of litigation against the City and ends the unregulated proliferation of medical marijuana businesses in Los Angeles while minimizing the likelihood of substantial further legal action.

Preserves the Limited State Law Medical Marijuana Criminal Immunities Codified in the Compassionate Use Act and Medical Marijuana Program Act: The CUA, adopted by the voters in 1996, and MMPA, enacted by the State Legislature in 2003, provide California's qualified patients, persons with an identification card, and their primary caregivers, with limited immunities to specified criminal prosecutions under State law for the purpose of enabling access to marijuana for medical purposes. The proposed ordinance excludes from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed ordinance is in conformity with public necessity by preserving the limited state law medical marijuana criminal immunities consistent with state law.

Conformity With Public Convenience: The proposed ordinance is in conformity with public convenience because it confirms and restores the rule of law, as expressed by the *Pack* court, in Los Angeles. Further, the ordinance exempts from the definition of medical marijuana business certain locations and vehicles used in strict conformity with state law. The proposed ordinance is in conformity with public convenience by preserving the limited state law medical marijuana criminal immunities, and by not prohibiting seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana, consistent with in state law.

Conformity With General Welfare: The proposed ordinance is in conformity with general welfare because it: (1) prohibits medical marijuana businesses which are associated with criminal activity, including murders, robberies, and other crimes; (2) resolves neighborhoods and business complaints about disruption and public safety; (3) prevents the continuing drain of litigation against the City; (4) ends the unregulated proliferation of medical marijuana businesses in Los Angeles without creating the likelihood of substantial further legal action; and (5) and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with in state law.

Conformity With Good Zoning Practice: The proposed ordinance is in conformity with good zoning practice by prohibiting medical marijuana businesses which are not an enumerated use in the Zoning Code. The LAMC limits uses to those expressly enumerated in the Zoning Code. Medical marijuana businesses are not an allowed, enumerated use in any zone in the City.

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DIRECTOR'S INITIATION

WHEREAS, the Compassionate Use Act ("CUA"), adopted by the voters in 1996, and the Medical Marijuana Program Act ("MMPA"), enacted by the State Legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes that include ensuring that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to state criminal prosecution or sanction;

WHEREAS, commencing in 2007, according to local media reports and neighborhood sightings and complaints, more than 850 medical marijuana businesses randomly opened, closed and reopened storefront shops and commercial growing operations in the City without any land use approval under the Los Angeles Municipal Code ("LAMC" or "this Code") and, since that time, an unknown number of these businesses continue to randomly open, close, and reopen in Los Angeles, each with no regulatory authorization from the City;

WHEREAS, the Los Angeles Police Department ("LAPD") has reported that, as the number of marijuana dispensaries and commercial growing operations continue to proliferate without legal oversight, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated marijuana businesses, including but not limited to, murders, robberies, the distribution of tainted marijuana, and the diversion of marijuana for non-medical and recreational uses;

WHEREAS, in January 2010, the City established a comprehensive regulatory framework to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety, by adopting the Medical Marijuana Ordinance ("MMO"), adding Article 5.1, Chapter IV, of the LAMC, subsequently amended by ordinances including, in 2011, Temporary Urgency Ordinance No. 181530 (the "TUO");

NOW, THEREFORE, pursuant to Section 558 (b)(1) of the City Charter and Section 12.32 A of the LAMC, I hereby initiate repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in Response to Recent Appellate Court Decisions Concerning Medical Marijuana. The draft ordinance is initiated by the Director, notwithstanding that it remains a public safety rather than a land use regulation, to avoid potential delays and substantial expense to the City based upon a replay of court challenges to the City's prior medical marijuana ordinances alleging they were land use measures.

Alan Bell for

MICHAEL J LOGRANDE
Director of Planning

5-15-12
Date

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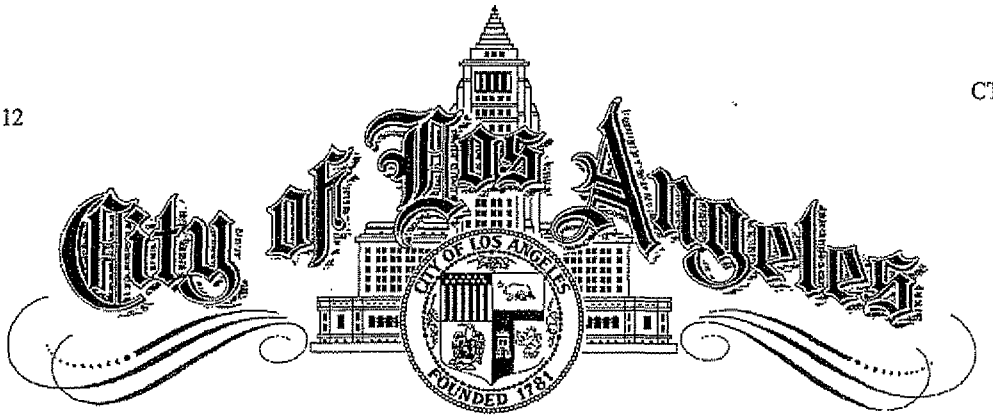

CARMEN A. TRUTANICH
City Attorney

May 15, 2012

Michael LoGrande
Director of Planning
Department of City Planning
of the City of Los Angeles
5th Floor, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File Nos. 11-1737 and 11-1737-S1
CEQA: ENV-2012-1273-CE

Dear Mr. LoGrande:

This Office has prepared and now transmits to the Department of City Planning the enclosed Report entitled "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code in Response to Recent Appellate Court Decisions Concerning Medical Marijuana" (City Attorney Report). The City Attorney Report recommends adoption of a draft ordinance, attached as Attachment 1 to the City Attorney Report, approved as to form and legality. The draft ordinance would repeal and replace Article 5.1 of Chapter IV, Public Welfare, of the Los Angeles Municipal Code (LAMC), in response to recent appellate court decisions, by prohibiting medical marijuana businesses, while preserving the limited state law medical marijuana criminal immunities consistent with the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.

The draft ordinance replaces the draft ordinance previously considered by the City Planning Commission (CPC) on January 26, 2012, when it unanimously voted to recommend approval of the ordinance as then drafted. The City Council has not acted on the CPC's prior recommendation. The primary difference between the new draft and the prior draft is that the new draft addresses processing and cultivation, not addressed by the prior draft. Cultivation was nonetheless the topic of inquiry by the City Planning

Commission and it and processing are now explicitly addressed in response to opinions issued by the California appellate courts in and subsequent to January 2012.

The City Attorney respectfully requests that the Department of City Planning:

(1) Refer and transmit the City Attorney Report to the CPC for recommendation to the City Council. The City Attorney Report includes the following: (a) the draft ordinance as Attachment 1; (b) proposed exemptions under the California Environmental Quality Act (CEQA) for the reasons set forth in the CEQA Narrative and draft Notice of Exemption attached as Attachments 2 and 3; and (c) Findings and Recommendation pursuant to City Charter §556 and §558(b)(2) attached as Attachment 4; and

(2) Agendize these matters for recommendation by the CPC at its regularly scheduled meeting of May 24, 2012.

These requests are made notwithstanding that the draft ordinance remains a public safety and not a land use regulation. Review by the CPC at this time will avoid potential delays and substantial expense to the City based upon a replay of earlier arguments made by medical marijuana businesses in intensive litigation challenging the City's existing medical marijuana regulations. Those plaintiffs alleged that the City's existing regulations constitute a land use ordinance requiring CPC recommendation prior to its submission to the City Council, which was never obtained.

We continue to assert and believe that this is a public safety and not a land use matter. However, your cooperation in providing us with an "advisory" recommendation is requested out of an abundance of caution and prudence.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By
WILLIAM W. CARTER
Chief Deputy City Attorney

WWC:SNB:lee
Attachment
(City Attorney Report entitled "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code in Response to Recent Appellate Court Decisions Concerning Medical Marijuana")

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CITY PLANNING
200 N. SPRING STREET, ROOM 525
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TRANSMITTAL OF REPORT RE:

PROPOSED ORDINANCE REPEALING AND REPLACING ARTICLE 5.1 OF CHAPTER IV OF THE LOS ANGELES MUNICIPAL CODE IN RESPONSE TO RECENT APPELLATE COURT DECISIONS CONCERNING MEDICAL MARIJUANA; FINDINGS AND RECOMMENDATION PURSUANT TO CITY CHARTER § 556 AND §558(B)(2)

The Honorable City Planning Commission
of the City of Los Angeles
200 North Spring Street
Room 272, City Hall
Los Angeles, CA 90012

Council File Nos. 11-1737 and 11-1737-S1
CEQA: ENV-2012-1273-CE

Honorable Members:

The Department of City Planning (City Planning), at the request of the Office of the City Attorney (City Attorney) now transmits for your recommendation to the City Council, the report prepared by the City Attorney entitled "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code In Response To Recent Appellate Court Decisions Concerning Medical Marijuana" (City Attorney Report). The ordinance is initiated by the Director of City Planning. City Planning, at the request of the City Attorney, respectfully requests that you agendize this matter for consideration at your regularly scheduled meeting of May 24, 2012.

The City Attorney Report includes the following: (a) the draft ordinance as Attachment 1; (b) proposed exemptions under the California Environmental Quality Act (CEQA) for the reasons set forth in the draft Notice of Exemption and CEQA Narrative attached as Attachments 2 and 3; and (c) Findings and Recommendation pursuant to City Charter §556 and §558(b)(2) attached as Attachment 4.

The draft ordinance replaces the draft ordinance previously considered by the City Planning Commission (CPC) on January 26, 2012, when it unanimously voted to

recommend approval of the ordinance as then drafted. The City Council has not acted on the CPC's prior recommendation. The primary difference between the new draft and the prior draft is that the new draft addresses processing and cultivation, not addressed by the prior draft. Cultivation was nonetheless the topic of inquiry by the City Planning Commission and it and processing are now explicitly addressed in response to opinions issued by the California appellate courts in and subsequent to January 2012.

As stated in the City Attorney Report, the City Attorney recommends that you:

1. ADOPT the City Attorney Report as the report of the City Planning Commission on the subject;

2. RECOMMEND that the City Council DETERMINE that the ordinance is exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA Narrative and draft Notice of Exemption attached as Attachments 3 and 4, respectively, to the City Attorney Report;

3. RECOMMEND that the City Council DIRECT that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.

4. ADOPT the Findings and Recommendation Pursuant To City Charter § 556 and §558(b)(2) attached as Attachment 4 to the City Attorney Report; and

5. RECOMMEND to the City Council adoption of the draft ordinance attached as Attachment 1 to the City Attorney Report.

The Department of City Planning concurs in the request and recommendation of the City Attorney.

If you have any questions regarding this matter, please contact Chief Deputy William C. Carter or Special Assistant City Attorney Jane Usher at (213) 978-8100, or the Deputy Director of Planning, Alan Bell at (213) 978-1272. They, and other members of their staff, will be present when you consider this matter to answer any questions you may have.

Sincerely,

DEPARTMENT OF CITY PLANNING

Alan Bell for

MICHAEL LOGRANDE
Director of Planning

Attachments

1 – City Attorney Report entitled "Report Re: Proposed Ordinance Repealing and Replacing Article 5.1 of Chapter IV of The Los Angeles Municipal Code In Response To Recent Appellate Court Decisions Concerning Medical Marijuana"