

CITY OF LOS ANGELES  
CALIFORNIA

**JUNE LAGMAY**  
City Clerk

**HOLLY L. WOLCOTT**  
Executive Officer

When making inquiries relative to  
this matter, please refer to the  
Council File No.



**ANTONIO R. VILLARAIGOSA**  
MAYOR

Office of the  
CITY CLERK

**Council and Public Services**  
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**SHANNON HOPPE**  
Council and Public Services  
Division

[www.cityclerk.lacity.org](http://www.cityclerk.lacity.org)

February 19, 2013

To All Interested Parties:

The City Council adopted the action(s), as attached, under Council File No. 13-1300-S5, at its meeting held January 29, 2013.

City Clerk  
io

TIME LIMIT FILES  
ORDINANCES

FORTHWITH

Mayor's Time Stamp  
RECEIVED  
2013 FEB -5 PM 4: 11  
CITY OF LOS ANGELES

City Clerk's Time Stamp  
CITY CLERK'S OFFICE  
2013 FEB -5 PM 4: 08  
CITY CLERK  
BY \_\_\_\_\_  
DEPUTY

COUNCIL FILE NUMBER 13-1300-S5 COUNCIL DISTRICT \_\_\_\_\_

COUNCIL APPROVAL DATE FEBRUARY 5, 2013 LAST DAY FOR MAYOR TO ACT FEB 15 2013

ORDINANCE TYPE:  Ord of Intent  Zoning  Personnel  General

Improvement  LAMC  LAAC  CU or Var Appeals - CPC No. \_\_\_\_\_

SUBJECT MATTER: PLACING AN ORDINANCE PROPOSITION ON THE MAY 21, 2013 BALLOT TO REGULATE AND TAX MEDICAL MARIJUANA BUSINESSES

	APPROVED	DISAPPROVED	BY _____ CITY CLERK DEPUTY
PLANNING COMMISSION	_____	_____	RECEIVED CITY CLERK'S OFFICE 2013 FEB 13 PM 4: 21
DIRECTOR OF PLANNING	_____	_____	
CITY ATTORNEY	X _____	_____	
CITY ADMINISTRATIVE OFFICER	_____	_____	
OTHER	_____	_____	

DATE OF MAYOR APPROVAL DEEMED APPROVED OR \*VETO FEB 11 2013  
(\*VETOED ORDINANCES MUST BE ACCOMPANIED WITH OBJECTIONS IN WRITING PURSUANT TO CHARTER SEC. 250(b) (c))

(CITY CLERK USE ONLY PLEASE DO NOT WRITE BELOW THIS LINE)

DATE RECEIVED FROM MAYOR FEB 13 2013 ORDINANCE NO. 182443

DATE PUBLISHED FEB 19 2013 DATE POSTED \_\_\_\_\_ EFFECTIVE DATE FEB 19 2013

ORD OF INTENT: HEARING DATE \_\_\_\_\_ ASSESSMENT CONFIRMATION \_\_\_\_\_

ORDINANCE FOR DISTRIBUTION: YES  NO



## Council Action

The City Council ADOPTED the following recommendation(s), contained in a COMMUNICATION FROM THE CITY ATTORNEY which were WAIVED, pursuant to Council Rule 17, by the Chair of the Rules, Elections and Intergovernmental Relations Committee, SUBJECT TO THE APPROVAL OF THE MAYOR:

1. DETERMINE that the City Council's action approving the ballot resolutions and election ordinance, Attachments 4, 5, and 6 to the "Report Re: Proposed Findings, Resolutions, and Ordinance To Place An Ordinance Proposition On The May 21, 2013, Ballot To Regulate And Tax Medical Marijuana Businesses" (City Attorney Report) prepared and transmitted by the Office of the City Attorney placing the proposed measure to regulate and tax medical marijuana businesses on the ballot, is exempt under the California Environmental Quality Act (CEQA) for the reasons stated in the CEQA Narrative and draft Notice of Exemption, Attachments 1 and 2, respectively to the City Attorney Report.
2. DIRECT that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after Council approves the ballot resolutions and election ordinance, Attachments 4, 5, and 6 to the City Attorney Report.
3. ADOPT the findings pursuant to City Charter §556 and §558(b)(2), set forth in Attachment 3 to the City Attorney Report.
4. ADOPT the accompanying RESOLUTION to submit the proposed measure as a ballot measure to the qualified electors of the City of Los Angeles and stating the full text of the measure, Attachment 4 to the City Attorney Report.
5. ADOPT the accompanying RESOLUTION stating the ballot title and question for the proposed measure to be submitted to the qualified voters of the City of Los Angeles, Attachment 5 to the City Attorney Report.
6. PRESENT and ADOPT the accompanying ORDINANCE calling a Special Election to be held and consolidated with the City's General Municipal Election on May 21, 2013, for the purpose of submitting the proposed measure to the qualified electors of the City of Los Angeles, Attachment 6 to the City Attorney Report.

*Ord.*  
**ADOPTED**

FEB 5 2013

LOS ANGELES CITY COUNCIL

TO THE MAYOR FORTHWITH

Council File No. 13-1300-S5

*Resolutions*  
**ADOPTED**

JAN 29 2013

LOS ANGELES CITY COUNCIL

ORDINANCE OVER TO

*Feb. 5, 2013*

MAYOR WITH FILE

## RESOLUTION

**WHEREAS**, the Council of the City of Los Angeles has adopted a resolution to place an ordinance before the qualified voters of the City of Los Angeles at a Special Election to be called on May 21, 2013, and consolidated with the City's General Municipal Election to be held on the same date; and

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

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

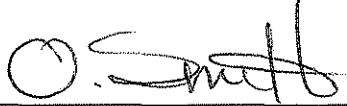
**MEDICAL MARIJUANA REGULATION AND TAXATION. LIMIT NUMBER OF BUSINESSES TO APPROXIMATELY 135 THAT OPERATED SINCE SEPTEMBER 2007 AND REGISTERED, IF THEY MEET OTHER REQUIREMENTS AND OPERATIONAL STANDARDS. EXEMPT DWELLINGS OF THREE OR FEWER PATIENTS/CAREGIVERS CULTIVATING MEDICAL MARIJUANA FOR THEIR PATIENTS OR THEMSELVES FROM REGULATION. INCREASE TAXES ON MEDICAL MARIJUANA BUSINESSES. PROPOSITION \_\_\_\_.**

Shall an ordinance regulating businesses where marijuana is cultivated, processed, distributed, delivered or given away to qualified patients or primary caregivers (MMBs) by: (1) prohibiting MMBs but providing limited immunity for MMBs that operated since September 2007, timely registered with the City, generally have not ceased operations, pay City taxes, pass annual background checks, are separated from residential zones, maintain certain distances from schools, parks, child care facilities, other designated places and other MMBs, and meet other requirements and operational standards; (2) exempting dwelling units used by three or fewer patients/caregivers to cultivate medical marijuana on-site for their patients or themselves, and other exemptions; and (3) increasing the MMB tax to \$60 per each \$1,000 of gross receipts; be adopted?

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

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on JAN 29 2013.

JUNE LAGMAY, City Clerk

By  Deputy

C.F. No. 13-1300-55

## RESOLUTION

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

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

Section A. The following ordinance of the City of Los Angeles is hereby proposed to be submitted for approval by a majority of the qualified voters of the City of Los Angeles at a Special Election to be called on May 21, 2013, and consolidated with the City's General Municipal Election to be held on the same date:

### ORDINANCE NO. \_\_\_\_\_

An ordinance replacing Article 5.1 of Chapter IV and amending Section 21.50(b) of the Los Angeles Municipal Code. The ordinance: (a) prohibits medical marijuana businesses, (b) grants a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increases the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts, 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 including to ensure that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes are not subject to state criminal prosecution;

**WHEREAS**, commencing in 2007, according to local media reports and neighborhood sightings and complaints, more than 850 medical marijuana businesses 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 Code) and, since that time, an unknown number of these businesses continue to open, close, and reopen in Los Angeles, 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 August 2007, the City enacted an Interim Control Ordinance 179027 (the ICO) to prohibit medical marijuana businesses in the City and to exempt from that prohibition, until the City's adoption of comprehensive medical marijuana regulations, certain existing medical marijuana facilities that timely registered with the City Clerk; and 185 existing medical marijuana businesses registered with the City Clerk by November 13, 2007 in accordance with all requirements of the ICO;

**WHEREAS**, in January 2010, the City established a regulatory framework to balance the proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety, by adopting Medical Marijuana Ordinance 181069 (MMO), adding Article 5.1, Chapter IV, of the LAMC, subsequently amended by ordinances including, in 2011, Temporary Urgency Ordinance 181530 (TUO); and 230 medical marijuana businesses notified the City Clerk by February 18, 2011 of their intention to register under the MMO as amended by 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, recurrent neighborhood complaints regarding crime and negative secondary effects, and an inappropriate and overly excessive drain upon civic legal and law enforcement resources;

**WHEREAS**, in the March 8, 2011 Municipal Election, the voters of the City of Los Angeles passed Measure M and enacted Los Angeles Municipal Code Section 21.50, which imposed a tax of \$50 for every \$1,000 of revenues generated by Medical Marijuana Collectives, which measure has been subsequently challenged in court;

**WHEREAS** 157 medical marijuana businesses that registered under the ICO also notified the City Clerk by February 18, 2011 of their intention to register under the MMO as amended by the TUO; and 135 out of those 157 medical marijuana businesses also registered under Measure M in either 2011 or 2012;

**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.4th 1070, 1091, fn. 27;

**WHEREAS**, although the Los Angeles Superior Court issued a narrow preliminary 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 because federal preemption had not been raised in those cases; 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 and to avoid any possibility of violating federal law, the City discontinued implementing the MMO, as amended;

**WHEREAS**, in December 2011, California Attorney General Kamala Harris abandoned her effort to revise the medical marijuana guidelines of the Attorney General and advised the State Legislature that in the opinion of the Attorney General, new legislation is required in order to resolve questions of law regarding medical marijuana that are not answered by existing law. The Attorney General specifically called for legislation on the contours of collective and cooperative cultivation, and on the definition and rules for dispensaries;

**WHEREAS**, in January 2012, the California Supreme Court granted review of *Pack*, declined to enjoin a ban of medical marijuana business proposed for the City of Long Beach, and subsequently dismissed its review in August 2012 as abandoned and moot, thereby not addressing the substantive question of federal preemption of local regulations, and has also granted review of *City of Riverside v. Inland Empire Patient's Health & Wellness Center*, 200 Cal.App.4th 885 (4<sup>th</sup> 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, with oral argument in those cases set for February 5, 2013;

**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 whereas the *Evergreen Holistic* case decision has been accepted for review by the California



Supreme Court with further action deferred pending consideration and disposition of related issues in the *Inland Empire* case;

**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*, 204 Cal.App.4th 1512 (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.'" *Joseph* at 1523;

**WHEREAS**, in July 2012, the Second District Court of Appeal reversed the preliminary injunction order issued against the MMO in the case now renamed from its original filing to *420 Caregivers, LLC v. City of Los Angeles*, 207 Cal. App. 4th 703 (2<sup>nd</sup> Dist., 2012), which held, among other things, that (a) the provisions of the MMO were lawful that limited medical marijuana collectives in the City to only those approximately 180 that had timely registered with the City under the ICO, and (b) the MMO sunset by its own terms on June 6, 2012, and that as of that date only collectives of three or fewer members are allowed to operate in the City, and whereas portions of this decision have been accepted for deferred review by the California Supreme Court;

**WHEREAS**, having made a confidential settlement proposal that was rejected by the dispensary litigants, the City thereafter sought in August 2012 to address the continued proliferation of unregulated and unauthorized medical marijuana businesses in the City by enacting Ordinance 182190 (Gentle Ban) to prohibit medical marijuana businesses, with limited exceptions that include dwelling units used by three or fewer qualified persons to process or collectively and cooperatively cultivate medical marijuana; and hospices and licensed clinics, care facilities and home health agencies entitled to the state law qualified immunities;

**WHEREAS**, the City Clerk presented a referendary petition to the City Council regarding the Gentle Ban Ordinance on September 17, 2012, and the City Charter authorizes the Council to respond to the referendary petition by repealing the Gentle Ban Ordinance within twenty days of its presentation;

**WHEREAS**, in connection with consideration by the City Council of the referendary petition, members and representatives of the medical marijuana community submitted comments and objections to the Gentle Ban and alternative proposed regulations to restrict medical marijuana businesses;

**WHEREAS**, the comments, objections and proposals include, among others, limitations upon the number of medical marijuana businesses rather than a ban; prohibitions that restrict rather than affirmative regulations that permit or authorize such businesses; prohibitions upon operating within certain distances of sensitive uses;

prohibitions upon hours of operation, unaccompanied minors, marijuana visible from the exterior, lighting, and signage; criminal background checks; requiring transparent operations; requiring testing of marijuana for mold and contaminants; and restrictions related to security;

**WHEREAS**, in response to the comments, objections and proposals, the City Council adopted Ordinance 182286 on October 9, 2012 repealing the Gentle Ban Ordinance;

**WHEREAS**, an appellate ruling issued on October 24, 2012 by the Fourth Appellate District of the California Court of Appeal in the case of *People v. Jackson*, 2012 Cal. App. LEXIS 1106, regarding the scope of immunities available under the MMPA regarding profits and sales by medical marijuana collectives;

**WHEREAS**, on November 5, 2012, Department 311 of the Los Angeles Superior Court, in related actions filed by the People of the State of California and entitled *People v. Cahuenga's The Spot LLC, et al.*, Los Angeles Superior Court Lead Case No. BC460794 (and all related cases), granted motions for preliminary injunction by the People against numerous medical marijuana dispensaries which opened in the City in violation of the City's Zoning Code, which does not include medical marijuana as an enumerated use, and without following the required procedures to obtain a Zoning Administrator Interpretation (ZAI) under LAMC §12.21(A)(1) or Variance (Variance) under LAMC §12.27 for such a use, which orders have been appealed; and

**WHEREAS**, the City wishes to address the continued proliferation of unauthorized medical marijuana businesses in the City by granting a limited immunity from enforcement of its prohibition on medical marijuana businesses under Los Angeles Municipal Code Section 11.00 (l) to those medical marijuana businesses that have abided by the City's regulations to date and do not violate the restrictions set forth in this ordinance, 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.

**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 replaced 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 enact a materially new ordinance that (a) prohibits medical marijuana businesses, but (b) grants a limited immunity from the enforcement of its prohibition to those medical marijuana businesses that do not violate the restrictions set forth in this ordinance, 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 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, drug trafficking 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, 12.03 and 45.19.5 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.

**"Manager"** means any person to whom a medical marijuana business has delegated discretionary powers to organize, direct, carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (a) to hire, select, or separate employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

**"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:

(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, with respect to qualified patients and persons with an identification card for their own personal medical use, and 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.

**“Youth Center”** means any indoor, public, private or parochial facility, other than a private residence or a multiple dwelling unit, which contains programs which provide, on a regular basis, activities or services for persons who have not yet reached the age of 18 years, including, but not limited to, community-based programs, after-school programs, weekend programs, violence prevention programs, leadership development programs, vocational programs, substance abuse prevention programs, individual or group counseling, remedial, tutorial or other educational assistance or enrichment, music, art, dance and other recreational or cultural activities, physical fitness activities and sports programs.

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, 11362.7, and 11834.02.

**“Alcoholism or drug abuse recovery or treatment facility”;**  
**“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. LIMITED IMMUNITY.**

Notwithstanding the activities prohibited by this Article, and notwithstanding that medical marijuana business is not and shall not become a permitted use in the City for so long as this Article remains in effect, a medical marijuana business shall not be subject to the remedies set forth in Los Angeles Municipal Code Sections 11.00 or 12.27.1 solely on the basis of: (1) an activity prohibited by Section 45.19.6.2; and (2) the fact that medical marijuana business is not a permitted use in the City, provided however that, as authorized by California Health and Safety Code Section 11362.83, this limited immunity is available and may be asserted as an affirmative defense only so long as subsections A through D and G through O of this Section 45.19.6.3 remain in effect in their entirety, only by a medical marijuana business at the one location identified in its original or any amended business tax registration certificate issued by the City, and only if that medical marijuana business does not violate any of the following medical marijuana business restrictions:

A. Every medical marijuana business is prohibited that was not operating in the City as a medical marijuana business by September 14, 2007, as evidenced by a business tax registration or tax exemption certificate issued by the City on or before November 13, 2007;

B. Every medical marijuana business is prohibited that did not register with the City Clerk by November 13, 2007 in accordance with all requirements of the City's Interim Control Ordinance 179027;

C. Every medical marijuana business is prohibited that did not notify the City Clerk by February 18, 2011 of its intention to register under the City's Medical Marijuana Ordinance 181069, as amended by the Temporary Urgency Ordinance 181530;

D. Every medical marijuana business is prohibited that ceased or ceases operation at the location set forth in its original or any amended business tax registration or tax exemption certificate issued by the City, as evidenced by: (i) an enforcement determination, written settlement agreement, or court order, that has not been repealed, rescinded, or overturned by a government agency or court of competent jurisdiction, or (ii) the absence of either a lease or deed and utility bills for the location, in the name of the medical marijuana business or in the name of any person or entity for the benefit of the medical marijuana business. Upon request from the City, a medical marijuana business that seeks immunity pursuant to this Article shall direct its landlord and utility providers to provide its lease and utility bills to the City Clerk. For purposes of provision (ii) of this subsection, a medical marijuana business shall not be deemed to have ceased operation during the time reasonably necessary to move to a new location pursuant to this Article, or if it temporarily ceased but resumed operation in response to an enforcement letter issued by a federal governmental entity or the City prior to the effective date of Temporary Urgency Ordinance 181530;

E. Every medical marijuana business is prohibited that failed or fails to: (i) obtain a City business tax registration for taxation as a medical marijuana collective in 2011 or 2012, and (ii) renew that business tax registration within 90 days of the effective date of this Article and before each annual renewal deadline thereafter;

F. Every medical marijuana business is prohibited that has an unpaid tax obligation to the City that is not paid in full, including any assessed fines, penalties, interest or other costs (collectively "unpaid tax obligations"), prior to the commencement of the following tax year. A taxpayer shall not be in breach of this subsection for tax years 2011 and 2012 if it pays the City by January 1, 2014 all unpaid tax obligations incurred for tax years 2011 and 2012. Further, a taxpayer shall not be in breach of this subsection if it enters into and fully performs per the terms of an offer and compromise or other settlement agreement with the City that satisfies any unpaid obligations. This subsection shall not deprive any medical marijuana business of rights, if any, to appeal or seek judicial determination of the propriety of any amounts alleged by the City as unpaid tax obligations, and a medical marijuana business shall not lose its claim of limited immunity due to the pendency of any such appeal or judicial determination;

G. Every medical marijuana business is prohibited that remains open and/or operating between the hours of 8 PM and 10 AM;

H. Every medical marijuana business is prohibited where marijuana and/or alcohol are consumed at the premises or in any area of the location used for parking any vehicle;

I. Every medical marijuana business is prohibited that allows a minor unaccompanied by a parent or legal guardian to enter its premises;

J. Every medical marijuana business is prohibited where marijuana is visible from the exterior of the premises;

K. Every medical marijuana business is prohibited that illuminates any portion of its premises during closure hours by lighting that is visible from the exterior of the premises, except such lighting as is reasonably utilized for the security of the premises;

L. Every medical marijuana business is prohibited that provides ingress or egress to its premises on any side of the location that (i) abuts, (ii) is across a street, alley or walk from, as measured at 90 degrees from the lot lines of the location, or (iii) has a common corner with any land zoned residential, except that an exit door required by this Code may be maintained for emergency egress only and must be locked from the exterior at all times. The above notwithstanding, this subsection shall not prohibit a medical marijuana business from locating across a street from, or having a common corner with, any land zoned residential if the medical marijuana business is separated from that residential zone by a public thoroughfare with a minimum roadway width of 80 feet. This subsection shall not apply to defeat the limited immunity claim of a medical marijuana business that is otherwise entitled to assert the limited immunity provided by this Article if it moves within one hundred eighty (180) days after the effective date of this Article to a location that does not violate this subsection;

M. Every medical marijuana business is prohibited that fails to identify by name and residence address each of its Managers to the City Clerk by October 31 of each year and whose Managers fail to successfully pass and publicly display at the location of the medical marijuana business the results of an annual LAPD LiveScan background check to be completed by January 31 of each year. A failed LAPD LiveScan is a LiveScan that includes any felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance;

N. Every medical marijuana business is prohibited that has one or more Managers who are also Managers at the same time of another medical marijuana business in the City; and

O. Every medical marijuana business is prohibited that is located within a 1,000-foot radius of a school, or within a 600-foot radius of a public park, public library, religious institution, child care facility, youth center, alcoholism, drug abuse recovery or treatment facility, or other medical marijuana business. The distance specified in this paragraph shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, child care facility, youth center, alcoholism or drug abuse recovery or treatment facility, or other medical marijuana business, to the closest property line of the lot on which the medical marijuana business is located without regard to intervening structures. In the event that two or more medical marijuana businesses are located within a 600-foot radius of one another, only the medical marijuana business with the earliest issuance date on a City business tax registration or tax exemption certificate for its operation at the location may



assert the limited immunity provided by this Article. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care and other facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) defeat the limited immunity claim of a medical marijuana business that is otherwise entitled to assert the limited immunity provided by this Article if it moves within 180 days after the effective date of this Article to a location that does not violate the distance requirements; and (iii) a medical marijuana business that violates the distance requirements because a sensitive use located within the prohibited radius of the medical marijuana business after the date on which the City issued a City business tax registration or tax exemption certificate to the medical marijuana business for its location.

The limited immunity provided by this Section shall not be available to and shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this Article. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any county, state, or federal governmental authority. Finally, the limited immunity provided by this Section shall be available and may be asserted only so long as each and every provision and clause of subsections A through D and G through O of this Section 45.19.6.3 remain valid, effective and operative.

#### **SEC. 45.19.6.4. CONFIDENTIALITY OF TAX INFORMATION.**

The City shall not disclose information and documents to the federal government, its officers, or agents regarding the gross receipts declared and taxes paid to the City by a medical marijuana business that is entitled to claim immunity pursuant to this Article absent a grand jury subpoena, civil or administrative subpoena, warrant, discovery request, summons, court order or similar process authorized under law which seeks the involuntary disclosure of such information and documents. If the City receives a civil or administrative subpoena, warrant, discovery request, summons, court order or similar process authorized under law seeking its involuntary disclosure of such information and documents to the federal government, its officers, or agents, the City shall provide a copy of the civil or administrative subpoena, discovery request, or court order to the medical marijuana business whose information and documents are sought. The medical marijuana business shall have ten (10) days from the date of such notice and receipt of copy within which to obtain and serve on the City a protective order from a court of competent jurisdiction. This provision shall take precedence over any other provisions in the Los Angeles Municipal Code or the Los Angeles Administrative Code governing the disclosure of information.

#### **SEC. 45.19.6.5. 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. So long as this Article remains in effect, 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; to add medical marijuana business to the Official Use List of the City; or to grant any variance authorizing any medical marijuana business.

**SEC. 45.19.6.6. 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 or benefit regarding any medical marijuana business. Any immunity or benefit conferred by this ordinance shall expire permanently and in full on the effective date of the City Council's enactment of new medical marijuana legislation after the issuance of guidance by the California Supreme Court guidance, or otherwise upon repeal of this ordinance.

**SEC. 45.19.6.7. DUE PROCESS AND ENFORCEMENT.**

All existing medical marijuana businesses must immediately cease operation; except that any medical marijuana business that that does not violate any of the medical marijuana business restrictions described in Section 45.19.6.3, Limited Immunity, may continue to operate but only so long as subsections A through D and G through O of Section 45.19.6.3 remain valid, effective and operative.

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.

In the event a court of competent jurisdiction preliminarily or permanently enjoins, or holds to be unconstitutional or otherwise invalid, any enforcement remedy provided for in this Section 45.19.6.7, then the remainder of the enforcement remedies provided for by this Section shall remain in full force and effect.

**SEC. 45.19.6.8. LIMITED SEVERABILITY.**

If any provision or clause of Section 45.19.6.3 of this Article is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of Section 45.19.6.3 of this Article, and to this end the provisions and clauses of Section 45.19.6.3 of this Article are declared to be inseverable. The preceding sentence notwithstanding,

if subsection E or F of Section 45.19.6.3 is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, subsections E and F of Section 45.19.6.3 of this Article shall be severable from the remaining subsections of Section 45.19.6.3 of this Article.

Except for the inseverability of the provisions, clauses and applications of Section 45.19.6.3 on the terms set forth hereinabove, if any other provision or clause of this Article is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect those provisions, clauses or applications of this Article which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this Article other than Section 45.19.6.3 are declared to be severable.

#### **SEC. 45.19.6.9. EFFECTIVE DATE.**

This Article shall be effective upon its passage.

#### **Section 2. Taxation of Medical Marijuana Collectives.**

A. Section 21.50(b) of the Los Angeles Municipal Code is amended to change the tax rate from \$50 to \$60, to read as follows:

(b) Every person engaged in operating or otherwise conducting a medical marijuana collective not otherwise specifically taxed by other business tax provisions of this Chapter, shall pay a business tax of \$60.00 for each \$1,000.00 of gross receipts or fractional part thereof.

B. **Effective Date.** This amendment to Section 21.50(b) of the Los Angeles Municipal Code to change the tax rate from \$50 to \$60 shall be effective upon the beginning of the first tax year following passage of this ordinance.

C. **Severability.** If this Section 2 of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the validity of the remaining provisions of this ordinance and, to this end, the provisions of Section 2 of this ordinance are declared to be severable from the remaining provisions of this ordinance.

**Section 3. Competing Measures.** In the event that this measure and another measure or measures relating to the regulation of medical marijuana in the City of Los Angeles appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes than the other measure or measures, the provisions of this measure shall prevail in their entirety over all provisions of the competing measure or measures, and the competing measure or measures shall be null and void.

Section 4. Amendment and Repeal. As an ordinance submitted to the voters by the Los Angeles City Council, the provisions of this ordinance, other than the taxation provisions contained in Section 2, shall be subject to amendment or repeal as provided in Section 464(b) of the Los Angeles City Charter. The City shall amend or repeal this ordinance pursuant to Charter Section 464(b) as may be appropriate in order to implement judicial rulings or guidance from the California Supreme Court regarding what medical marijuana activities and conduct California cities can and cannot regulate.

Sec. B. The City Clerk is hereby authorized and directed to publish a notice containing the proposed ballot measure, specifying the date of May 21, 2013 as the date the measure is to be voted upon by the qualified voters of the City of Los Angeles. The notice shall be published once in a newspaper of general circulation in the City of Los Angeles, and in each edition thereof during that day of publication. The City Clerk is authorized and directed to prepare and keep in the City Clerk's office a sufficient supply of copies of the proposed ballot measure and to distribute the proposed ballot measure to any and all persons requesting a copy. Further, the City Clerk is authorized and directed to mail copies of the proposed ballot measure to each of the qualified voters of the City of Los Angeles.

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

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

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on JAN 29 2013.



JUNE LAGMAY, City Clerk

By *[Signature]*  
Deputy

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By *[Signature]*  
JANE USHER  
Special Assistant City Attorney

Date 1/25/13

File No. 13-13000-35

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

January 25, 2013

See attached report.

*[Signature]*  
Michael LoGrande  
Director of Planning