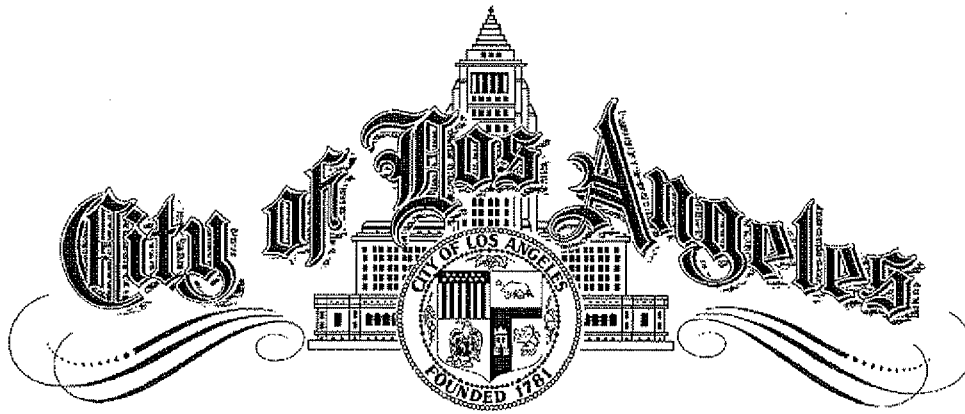


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 3 - 0 0 4 4
JAN 2 5 2013

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**

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

Council File No. 11-1737-S4
CEQA: ENV-2013-207-CE

Honorable Members:

This Office has prepared and now transmits for your consideration proposed findings, resolutions, and an ordinance regarding action by the City Council to call a special election to be held and consolidated with the City's general municipal election on May 21, 2013, for the purpose of submitting an ordinance proposition to the qualified electors of the City of Los Angeles replacing Article 5.1 of Chapter IV and amending section 21.50(b) of the Los Angeles Municipal Code to regulate and tax medical marijuana businesses. The ordinance would (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts.

Background

On January 3, 2013, the Los Angeles City Clerk transmitted to the City Council a certified initiative petition proposing an ordinance regulating medical marijuana collectives. On January 7, 2013, the City Clerk transmitted a second certified initiative petition proposing a different ordinance regulating medical marijuana collectives and also increasing the existing tax on medical marijuana collectives to \$60 per each \$1,000 of gross receipts.

On January 22, 2013, the City Council voted to submit the initiatives to the qualified electors of the City of Los Angeles at a Special Election to be held and consolidated with the City's General Municipal Election on May 21, 2013. That vote of Council is subject to a second reading on January 29, 2013.

The City Council previously identified its own approach to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety. That approach would provide a limited immunity from enforcement to medical marijuana businesses that comply with specified regulatory and land use restrictions.

The City Attorney and Planning Department transmitted a proposed Limited Immunity Ordinance (proposed LIO) to the City Planning Commission (CPC) as Attachment 1 to City Attorney Report No. R12-0364 (Nov. 19, 2012), Council Files 08-0923 and 11-1737, CEQA: ENV-2012-3200-CE, now Council File 11-1737-S4. On November 29, 2012, the CPC adopted the City Attorney Report with minor technical corrections to the proposed LIO, recommended adoption of the proposed LIO, and granted the City Attorney authority to make further corrections to the proposed LIO in response to verbal and written comments received by CPC.

Council Request

On January 16, 2013, the City Council adopted a motion requesting that the City Attorney prepare the necessary election ordinance and ballot resolutions to place an ordinance proposition on the May 21, 2013, ballot to include provisions substantially similar to those of the draft ordinance attached to City Attorney Report No. R12-0364 (Nov. 19, 2012), with additional and/or modified provisions as deemed appropriate and including if appropriate an increase in the existing tax on medical marijuana collectives to \$60 per each \$1,000 of gross receipts.

January 30, 2013, is the last day for the City Council to adopt resolutions and an election ordinance to place the proposed LIO on the May 21, 2013, ballot. Election Code 601(b)(110 days prior to the date of the election.)

Recommended Actions

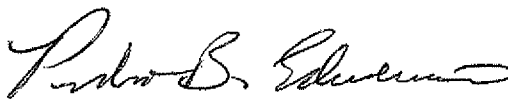
We recommend that you take the following actions:

1. DETERMINE that the Council's action approving the attached ballot resolutions and election ordinance, Attachments 4, 5, and 6, 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;
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;
3. ADOPT the Findings Pursuant To City Charter §556 and §558(b)(2), set forth in Attachment 3;
4. ADOPT the 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;
5. ADOPT the 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; and
6. ADOPT the 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.

If you have any questions regarding this matter, please contact Special Assistant City Attorney Jane Usher at (213) 978-8100. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:JU:SNB:pj
Transmittal

Attachments

- 1 -- CEQA Narrative;
- 2 -- CEQA Notice of Exemption;
- 3 -- Findings Pursuant To City Charter § 556 And §558(B)(2);
- 4 -- RESOLUTION (approving full text of ballot measure to submit to voters);
- 5 -- RESOLUTION (approving ballot title and question for proposed measure); and
- 6 -- ORDINANCE (calling for a Special Election to be held and consolidated with General Municipal Election on May 21, 2013, to submit measure to voters).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) NARRATIVE: ENV 2013-0207-CE

I. PROJECT DESCRIPTION

Ballot resolutions and election ordinance (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 an ordinance proposition to the qualified electors of the City of Los Angeles replacing Article 5.1 of Chapter IV and amending Section 21.50(b) of the Los Angeles Municipal Code to: (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts.

II. PROJECT HISTORY

A. Federal Law

Federal law defines Schedule I controlled substances as those with "a high potential for abuse", "no currently accepted medical use", and "a lack of accepted safety for use of the drug or other substance under medical supervision." 21 U.S.C. § 812(b)(1)(A)(B)(C). Federal law classifies marijuana as a Schedule I controlled substance. 21 U.S.C. § 812(c)(10).

B. State Law

The Compassionate Use Act (CUA), passed as a ballot initiative in 1996, provides a limited defense from criminal prosecution for possession and cultivation of marijuana by a patient or a primary caregiver for medical purposes under limited circumstances. Health & Saf. Code §11362.5.

The California Legislature enacted the Medical Marijuana Program Act (MMPA) in 2003 through Senate Bill 420, adding Sections 11362.7 through 11362.83 to the Health and Safety Code. The MMPA sponsored a state program to provide identification cards to qualified persons to avoid unnecessary arrest and prosecution, and expanded immunities to include immunity against criminal prosecution under state law for collective and cooperative cultivation, but only for qualified patients and designated caregivers. Health & Saf. Code § 11362.775. The MMPA immunities also extend to: "(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use; [and] (2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana . . . only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver". Health & Saf. Code § 11362.765(b)(1)(2).

In August 2008, the California Attorney General issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use". In December 2011, the Attorney General issued an official communication to the State of California Senate and Assembly noting the "exploitation of California's medical marijuana laws by gangs, criminal enterprises, and others", and advising that new legislation is required to resolve questions of law regarding medical marijuana that are not answered, but instead are left open and unclear, by existing state law.

C. City of Los Angeles Ordinances

(1) Zoning Code

The only uses allowed in a given zone in the City are those expressly enumerated in the Los Angeles Municipal Code (LAMC). All other uses are prohibited. Marijuana is not enumerated as a land use.

The LAMC provides for new enumerated uses by a Zoning Administrator Interpretation (ZAI) or variance. LAMC §§ 12.21A1(a) and 12.21A2 vests the City's Office of Zoning Administration (ZA) with authority to determine permissible uses in addition to those listed in the Code. Any person may also apply for a variance where strict application of the Code would result in practical difficulties or unnecessary hardship, and where not materially detrimental to the public welfare or adverse to any element of the General Plan. LAMC § 12.27. No medical marijuana business has applied for a ZAI or variance.

(2) Medical Marijuana Ordinances

Commencing in 2007, more than 850 marijuana businesses randomly opened, closed and reopened storefront shops and commercial growing operations in the City without any land use approval under the Zoning Code. UCLA's Luskin School of Public Affairs published a study estimating that 472 medical marijuana businesses remained stores in operation as of September 4, 2012.

The explosion followed an August 2007 Interim Control Ordinance 179027 (ICO) enacted by the City to mandate closure pending comprehensive legislation, with an exemption from the closure mandate only for businesses pre-existing the ICO and which timely registered with the City. One hundred eighty five (185) existing medical marijuana businesses registered with the City Clerk by November 13, 2007 in accordance with all requirements of the ICO. Section 4 of the ICO provided an exemption from its prohibitions in cases of hardship. The City Clerk estimates 772 businesses filed hardship applications.

In January 2010, the City adopted a regulatory framework by enacting Medical Marijuana Ordinance 181069 (MMO) which added Article 5.1 to Chapter IV, Public Welfare, of the LAMC. The MMO was amended several times. The MMO resulted in numerous lawsuits challenging its

provisions. The actions were deemed related and complex and 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. The Superior Court entered a preliminary injunction order (PI Order) regarding parts of the MMO in December 2010.

The City responded to the PI Order in 2011 with Temporary Urgency Ordinance 181530 (TUO) amending those portions of the MMO disapproved by the court. The TUO by its own terms applied only until PI Order is reversed. Two hundred thirty (230) businesses notified the City Clerk by February 18, 2011 of their intention to register under the MMO as amended by the TUO submitted documents to the City under the TUO. On October 14, 2011, the Superior Court denied numerous motions to enjoin the TUO.

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.

One hundred fifty seven (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 One hundred thirty five 135 out of those 157 medical marijuana businesses also registered under Measure M in either 2011 or 2012;

On October 4, 2011, ten (10) days prior to the Superior Court Order declining to enjoin the MMO as amended by the TUO, the Second Appellate District ruled in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070, that significant provisions of the City of Long Beach's marijuana ordinance, modeled after the City's regulatory ordinance, were preempted by federal law. *Pack* held that while cities may enact prohibitions that restrict marijuana businesses, cities are preempted under the federal Controlled Substances Act (CSA) from enacting affirmative regulations that authorize marijuana businesses, and further raised the specter of violation of federal law through the actions of individual city officials. *Pack* at 1091, fn. 27. The Superior Court, in its October 14, 2011 Order, declined to address the impact of federal preemption upon the City's ordinance, which had not been raised by plaintiffs in that litigation, but observed that *Pack* could have a profound impact on the ordinance "which bears more than a passing resemblance to the Long Beach medical marijuana ordinance". Given the similarities between the ordinance in *Pack* and the City's regulatory ordinance, and to avoid any possibility of violating federal law, the City refrained from implementing its then existing regulatory framework to authorize marijuana businesses. Based upon the reasoning of *Pack*, the City then commenced the legislative process to enact prohibitions consistent with *Pack*.

In January 2012, the California Supreme Court granted review of *Pack*, and subsequently dismissed its review in August 2012 as abandoned and moot after the City of Long Beach

amended its ordinance. The California Supreme Court also granted 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. Rulings in these matters are expected by mid-2013.

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). 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. In March 2012, the Second Appellate District issued an additional ruling entitled *People ex rel. Trutanich v. Joseph*, 204 Cal.App.4th 1512 (2012), which held that that the MMPA did not immunize marijuana sales activity.

On July 3, 2012, the Court of Appeal reversed the lower court's December 2010 PI Order against portions of 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 (2nd Dist. 2012). On September 19, 2012, the California Supreme Court granted review of portions of the *420 Caregivers* Court of Appeal decision with further action deferred pending the Supreme Court's consideration and disposition of related issues in the *Inland Empire* and *G3 Holistic* cases.

Based upon the reasoning of *Pack*, the City enacted Ordinance 182190, commonly referred to as the "Gentle Ban", intended to become effective September 6, 2012. The Gentle Ban would have prohibited medical marijuana businesses and excluded from the definition of medical marijuana business, and consequently its prohibition, dwelling units used by three or fewer qualified persons to process or collectively cultivate marijuana; hospices and licensed health care facilities entitled to the state law qualified immunities; any location, but only for the time reasonably required for a primary caregiver to deliver marijuana; and vehicles when in use by a patient, or by primary caregiver to deliver or give away marijuana to a qualified patient, all only to the extent consistent with the CUA and MMPA.

Opponents of the Gentle Ban submitted a referendary petition, certified by the City Clerk and presented to the City Council on September 17, 2012. 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. The comments, objections, and proposals included, 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. In response to the comments, objections and proposals, the City Council adopted Ordinance 182286 on October 9, 2012 repealing the Gentle Ban Ordinance.

An additional appellate ruling issued on October 24, 2012 by the Fourth Appellate District 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.

On November 14, 2012, Department 311 of the Los Angeles Superior Court, in related actions filed by the People of the State of California entitled *People v. Cahuenga's The Spot LLC, et al.*, Los Angeles Superior Court Lead Case No. BC460794 (and all related cases), ruled that preliminary injunction orders will issue against numerous medical marijuana dispensaries that opened in the City in violation of the City's Zoning Code without following the required procedures to obtain a ZAI or variance.

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

(3) Proposed Ordinance

The draft ordinance would prohibit medical marijuana businesses. The prohibition pertains to the transport, cultivation, processing, distribution, delivery, or giving away of medical marijuana. The draft ordinance would exclude from the definition of medical marijuana business, and consequently from its prohibition, 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.

The proposed ordinance differs from the Gentle Ban by immunizing from the prohibition and from certain enforcement mechanisms those medical marijuana businesses that properly and timely registered under the City's prior medical marijuana ordinances, and that also abide by operating restrictions necessary for public safety. The proposed ordinance, consistent with State and Federal law, including *Pack* prohibits medical marijuana businesses and grants a limited immunity from enforcement to medical marijuana businesses that do not violate any of the following 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.

EXISTING ENVIRONMENT

As stated above, the Los Angeles City Council adopted Interim Control Ordinance 179027 (ICO) in August 2007. The ICO found that the spirit and intent of state law 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 185 existing medical marijuana businesses that registered with the City Clerk by November 13, 2007 in accordance with all requirements of the ICO.

Section 4 of the ICO provided an exemption from its prohibitions in cases of hardship. The City Clerk estimates 772 businesses that filed hardship applications. A handful of these files were acted upon and denied by the Council because there was no support for the 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.

In January 2010, the City adopted Ordinance 181069 (MMO) adding Chapter IV, Art. 5.1 §45.19.6 et seq., to the LAMC. The MMO limits, among other things, the location of marijuana collectives; limits their number; creates a process to 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 ICO as a basis to distinguish between collectives.

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 marijuana businesses based upon, among other criteria, a drawing from all

marijuana businesses 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). The City Clerk maintains a list of two hundred thirty (230) businesses that notified the City Clerk by February 18, 2011 of their intention to register under the MMO as amended by the TUO.

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 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 16, 2012, eight hundred one (801) individuals and entities are on the Certificate List.

It is the City's best estimate that the above cited do not represent 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, open, close, and reopen to avoid detection. UCLA's Luskin School of Public Affairs published a study estimating that 472 medical marijuana businesses remained stores in operation as of September 4, 2012. Nonetheless, these lists and studies 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 lists actually physically exist. 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 801— the number which have sought business tax registration certificates. The actual number of dispensaries is likely significantly less than 801 in light of the fact that a lesser number—230—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.

The effect of the draft ordinance would be to prohibit "medical marijuana businesses", defined in the ordinance to exclude dwelling units with fewer than four qualified persons operating at the location and defined health care locations, with the goal of immunizing from enforcement some number equal to or fewer than 135 larger medical marijuana businesses that meet the specified restrictions. The number 135 derives from the number of such businesses that meet the second, third and fifth limited immunity mandatory thresholds of having registered under the ICO on or before November 13, 2007, notified the City Clerk by February 18, 2011 of their

intention to register under the MMO as amended by the TUO, and obtained a City business tax registration for taxation as a medical marijuana collective in 2011 or 2012.

Several entities filed court challenges to, among other provisions of the City's tax codes, the requirement to obtain a City business tax registration for taxation as a medical marijuana collective. If that challenge succeeds and the City is not able to assert the failure to comply with that requirement as a valid basis to deny the limited immunity provided for in the ordinance, then the effect of the draft ordinance would be to prohibit "medical marijuana businesses" defined in the ordinance to exclude dwelling units with fewer than four qualified persons operating at the location and defined health care locations, but instead immunize from enforcement some number equal to or fewer than 157 larger medical marijuana businesses that meet the specified restrictions. The number 157 is the number of 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.

Based on the above, it is estimated that 157 businesses or less would be immune from the prohibition under the proposed ordinance. Therefore, the proposed ordinance would restrict the number of businesses operating in current baseline conditions.

IV. ENVIRONMENTAL REVIEW UNDER CEQA

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

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 proposed ordinance restricts the number of medical marijuana businesses. The impact of the proposed ordinance would be to change the operation of a former 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 restricting, not allowing the proliferation of, an activity not enumerated in the Zoning Code, the proposed ordinance 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."

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 restrict 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 certain 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.

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

- It enhances the environment by restricting medical marijuana businesses consistent with 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 from the operational nuisances of medical marijuana businesses, including: excessive light, late hours, and close proximity to sensitive uses such as residences, schools, public parks, and religious institutions;
- It protects the environment by restricting 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 continue to open and operate in Los Angeles. 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 restricting 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.

- Furthermore, the proposed ordinance immunizes from the restrictions and from certain enforcement mechanisms those medical marijuana businesses that properly and timely submitted documentation to the City under its prior medical marijuana ordinances, and that also abide by operating restrictions necessary for public safety, consistent with the comments, objections and proposals presented by members and representatives of the medical marijuana community in connection with the City's repeal of the Gentle Ban. It is estimated that a maximum of 157 (or 135, if a court challenge to the requirement to obtain a City business tax registration for taxation as a medical marijuana collective is successful) businesses would be immune to the prohibition.

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 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 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.

The proposed ordinance is also consistent with the referendary petition to the City Council presented by the City Clerk regarding the Gentle Ban Ordinance on September 17, 2012. The City Charter authorizes the Council to respond to the referendary petition by repealing the Gentle Ban Ordinance within twenty days of its presentation. 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. The proposed ordinance is also consistent with comments, objections, and proposals presented by members and representatives of the medical marijuana community in connection with the City's repeal of the Gentle Ban.

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 the ultimate outcome of the proposed ordinance is to reduce the number of medical marijuana businesses in the City and to restrict their operations. 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 restriction 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.

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. By restricting the number of 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 garish colors or contain window coverings that obstruct views into 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. By restricting the number of 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. By restricting the

number of 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 restriction on the number 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 garish colors or contain window coverings that obstruct views into 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 restricts the number of medical marijuana businesses, and does not impact agricultural uses because medical marijuana businesses are most prevalent in Commercial zones. Therefore, the proposed ordinance will not significantly impact agricultural uses. After adoption of the proposed ordinance, these agricultural 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 basin 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. By restricting the number of 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. By restricting the number of 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. By restricting the number of 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 or restrict 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 restriction 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. The restriction on the number of existing medical marijuana businesses 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 restricting the number and operations of such businesses, 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 restrict medical marijuana businesses due to good zoning practice . The proposed ordinance has a positive impact on land use and planning because it limits medical marijuana establishments, balancing the need for safe access for patients with controls and protections for communities. The result of this ordinance will be fewer medical marijuana establishments and greater availability of commercial space for lease to other commercial uses consistent with the City’s General Plan and Good Zoning Practice.

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. The restriction on the number of medical marijuana businesses 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. The only potential impact is a reduction of noise, as the number of medical marijuana businesses will be restricted. Furthermore, the proposed ordinance restricts the immune businesses to operate between the hours of 10am and 8pm and prohibit patrons from consuming marijuana or alcohol at the premises or in the parking area of the location. The restriction on the number of medical marijuana businesses coupled with the operational restrictions results in no new negative 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 and grants a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions. One such restriction is to prohibit businesses from providing ingress or egress to its premises on any side of the location that abuts, is across a street, alley or walk from, as measured at 90 degrees from the lot lines of the location, or has a common corner any land zoned residential

(except for exit doors required by the Los Angeles Municipal Code.) Medical marijuana businesses may be located across the street from, or have 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 of three lanes of traffic in each direction. Thus, not only does the proposed ordinance not significantly impact residential uses, but it also reduces disturbances and provides additional protection to such uses.

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 prohibiting medical marijuana businesses and granting a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, the demand on police to respond to such appeals will decrease. One such restriction is to limit hours of operation from 10am to 8pm, and prohibit consumption of alcohol and marijuana at the premises or in the parking area of the location. Such restrictions reduce neighborhood disturbances, which subsequently reduces demand on public safety resources.

N. Recreation

The proposed ordinance would not impact the public recreational facilities throughout the City. The proposed ordinance prohibits medical marijuana businesses and grants a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions. One such restriction is that immune businesses cannot be located within a 600-foot radius of a public park. 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 restricts a specific activity. There is no expansion of businesses that would promote an increase in traffic. There may be a temporary and immediate time in which there is an increase in vacant storefronts 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 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 proposed ordinance provides limited immunity for medical marijuana businesses which would result in no change to traffic.

Finally, there is a possibility that traffic may be displaced to other areas as qualified patients, persons with an identification card, or primary caregivers may travel to obtain and/or cultivate medical marijuana in different locations. This will not result in an increase in traffic, but rather a change in traffic patterns. This traffic change would be minimized by the fact that 182 medical marijuana businesses or less would be immune from the prohibition and may continue to operate. Any displacement effect is expected to be negligible, as the locations of 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. By restricting the number of 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

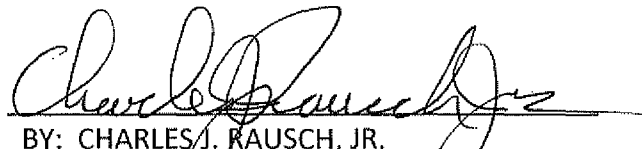
The proposed ordinance would not substantially degrade environmental quality, substantially reduce fish or wildlife habitat, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or 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. The restriction on the number of existing medical marijuana businesses 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
DEBORAH KAHEN, AICP, PLANNING ASSISTANT

January 24, 2013
DATE


BY: CHARLES J. RAUSCH, JR.
ASSOCIATE ZONING ADMINISTRATOR
OFFICE OF ZONING ADMINISTRATION
Telephone: (213) 978-1306

COUNTY CLERK'S USE

CITY OF LOS ANGELES

CITY CLERK'S USE

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

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
City Council/Department of City Planning

COUNCIL DISTRICT
ALL

PROJECT TITLE

Ballot resolutions and election ordinance calling for a Special Election to be held and consolidated with the City's General Municipal Election on May 21, 2013, for the purpose of submitting an ordinance proposition to the qualified electors of the City of Los Angeles replacing Article 5.1 of Chapter IV and amending Section 21.50(b) of the Los Angeles Municipal Code to: (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts.

LOG REFERENCE

11-1737-S4,
ENV-2013-207-CE

PROJECT LOCATION: Citywide

DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:

Ballot resolutions and election ordinance calling for a Special Election to be held and consolidated with the City's General Municipal Election on May 21, 2013, for the purpose of submitting an ordinance proposition to the qualified electors of the City of Los Angeles replacing Article 5.1 of Chapter IV and amending Section 21.50(b) of the Los Angeles Municipal Code to: (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts.

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

CONTACT PERSON

Deborah Kahen

AREA CODE

213

TELEPHONE NUMBER

978-1202

EXT.

This is to advise that on
EXEMPT STATUS: (Check One)

the City of Los Angeles has made the following determinations:

STATE CEQA GUIDELINES

CITY CEQA GUIDELINES

- | | | |
|---|---------------------------|----------------------------|
| <input type="checkbox"/> MINISTERIAL | Sec. 15268 | Art. II, Sec. 2b |
| <input type="checkbox"/> DECLARED EMERGENCY | Sec. 15269 | Art. II, Sec. 2a (1) |
| <input type="checkbox"/> EMERGENCY PROJECT | Sec. 15269 (b) & (c) | Art. II, Sec. 2a (2) & (3) |
| <input checked="" type="checkbox"/> CATEGORICAL EXEMPTION | Sec. 15300 <i>et seq.</i> | 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.)

JUSTIFICATION FOR PROJECT EXEMPTION:

The project 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

Associate Zoning Administrator

DATE

11/25/13

FEE:

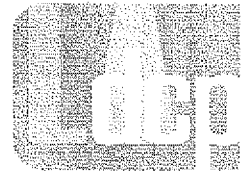
RECEIPT NO.

REC'D. BY

DATE

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

Rev. 11-1-03



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

CITY COUNCIL

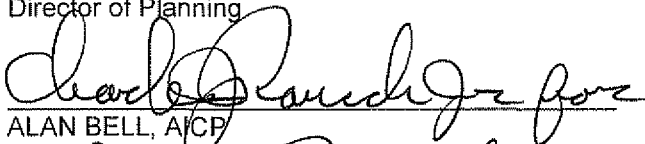
DATE: January 29, 2013
TIME: 10:00 a.m.
PLACE: Los Angeles City Hall
Council Chamber, Room 340
200 North Main Street
Los Angeles, California 90012

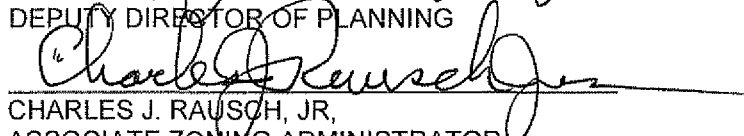
CASE NO: Special Item
CEQA: ENV-2013-307-CE
COUNCIL FILE: 11-1737-S4
LOCATION: Citywide
COUNCIL DISTRICT: All
PLAN AREAS: All

PUBLIC HEARING REQUIRED

SUMMARY: An 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 an ordinance proposition to the qualified electors of the City of Los Angeles to: (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase the existing tax on such businesses from \$50 to \$60 per each \$1,000 of gross receipts.

MICHAEL LOGRANDE
Director of Planning


ALAN BELL, ACP
DEPUTY DIRECTOR OF PLANNING


CHARLES J. RAUSCH, JR.,
ASSOCIATE ZONING ADMINISTRATOR,
OFFICE OF ZONING ADMINISTRATION
Telephone: (213) 978-1306

RECOMMENDED ACTIONS:

1. **Determine** that the Council's action approving the ballot resolutions and election ordinance, Attachments 4, 5, and 6 to "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" 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 to the City Attorney Report;

2. **DIRECT** the Department of City Planning to 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), 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

BACKGROUND:

The Department of City Planning has reviewed 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, including the draft ordinance stated in the Resolution, Attachment 4 to that Report. The draft ordinance would (a) prohibit medical marijuana businesses, (b) grant a limited immunity from enforcement to medical marijuana businesses that do not violate specified restrictions, and (c) increase 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.

Federal law classifies marijuana as a Schedule I controlled substance, with a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. 21 U.S.C. § 812(b)(1)(A)(B)(C) and (c)(10). Additionally, criminal activity, including robberies and other crimes are reported to be 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.

Notwithstanding federal law, and notwithstanding medical marijuana businesses are associated with criminal activity and negative secondary effects, the Compassionate Use Act (CUA), adopted by the voters of the State of California in 1996, and the Medical Marijuana Program Act (MMPA), enacted by the State Legislature in 2003, provide California's seriously ill patients 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.

The City has been responding for more than five years to on-going and inconsistent court rulings controlling its regulation of medical marijuana. The Courts of Appeal in the state of California have issued conflicting rulings regarding whether state law preempts local government from banning medical marijuana businesses. For example, in *City of Riverside v. Inland Empire Patient's Health & Wellness Center* (4th Dist. 2011) 200 Cal.App.4th 885, 891, the Court of Appeal found that state law does not preempt local ban of medical marijuana

dispensaries. In contrast, in *City of Lake Forest v. Evergreen Holistic Collective* (4th Dist. 2012) 203 Cal.App.4th 1413, 1424; and *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2nd Dist. 2012) 207 Cal.App.4th 601, 606, the Courts of Appeal found that state law preempts a complete ban against medical marijuana dispensaries. These conflicting rulings cases have been accepted for review by the California Supreme Court, which is expected to rule on the issue by mid-2013.

The City passed its most recent legislation, Ordinance 182190, on July 24, 2012, commonly referred to as the "Gentle Ban". However, the Gentle Ban never took effect. The City Council repealed the Gentle Ban after legislative debate and in response to a referendary petition presented by the City Clerk to the City Council regarding the Gentle Ban on September 17, 2012.

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. The comments, objections and proposals include, among others, immunizing a limited 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 residential zone and sensitive uses; prohibitions upon hours of operation, unaccompanied minors, marijuana visible from the exterior, lighting, and signage; criminal background checks; requiring transparent operations; and restrictions related to security. In response to the comments, objections and proposals, the City Council adopted Ordinance 182286 on October 9, 2012 repealing the Gentle Ban.

On January 3, 2013, the Los Angeles City Clerk transmitted to the City Council a certified initiative petition proposing an ordinance regulating medical marijuana collectives. On January 7, 2013, the City Clerk transmitted a second certified initiative petition proposing a different ordinance regulating medical marijuana collectives and also increasing the tax the existing tax on medical marijuana collectives to \$60 per each \$1,000 of gross receipts. On January 22, 2013, the City Council voted to submit the initiatives to the qualified electors of the City of Los Angeles at a Special Election to be held and consolidated with the City's General Municipal Election on May 21, 2013.

The City Council previously identified its own approach to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana, and public safety. That approach would provide a limited immunity from enforcement to medical marijuana businesses that comply with specified regulatory and land use restrictions. The draft ordinance defines medical marijuana business as: (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; and (2) any vehicle used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver. It excludes from the definition of medical marijuana business: (a) any dwelling unit where a maximum of three or fewer qualified patients or primary caregivers process or collectively 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; (b) any location when in use by a primary caregiver to deliver or give away marijuana to a qualified patient; (c) 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 (d) any vehicle when in use by a qualified patient for his/her personal medical use or primary caregiver to transport, deliver, or give away marijuana to a qualified patient, all only to the extent consistent with the CUA and MMPA.

The draft ordinance provides a limited immunity from its prohibition, and from certain other enforcement mechanisms in the Los Angeles Municipal Code, to medical marijuana businesses that operated in the City since September 14, 2007; registered by November 13, 2007 in accordance with all requirements of the City's 2007 Interim Control Ordinance 179027 (ICO); notified the City Clerk by February 18, 2011 of an intention to register under the City's 2010 Medical Marijuana Ordinance 181069 as amended by subsequent ordinances including the 2011 Temporary Urgency Ordinance 181530; obtained a City business tax registration for taxation as a medical marijuana collective in 2011 or 2012; comply with the City's business tax requirements; limit operating hours; prohibit on-site consumption of marijuana and alcohol, unaccompanied minors, marijuana visible from the exterior, illumination during closure hours, and access from abutting land zoned residential; pass annual Los Angeles Police Department background checks; refrain from hiring persons who manage or control more than one medical marijuana business in the City; and locate at minimum distances from schools, public parks, public libraries, religious institutions, child care facilities, youth centers, alcoholism, drug abuse recovery or treatment facilities, and other medical marijuana businesses.

The effect of the draft ordinance would be to prohibit "medical marijuana businesses", defined in the ordinance to exclude dwelling units with fewer than four qualified persons operating at the location and defined health care locations, with the goal of immunizing from enforcement some number equal to or fewer than 135 larger medical marijuana businesses that meet the specified restrictions. The number 135 derives from the number of such businesses that meet the second, third and fifth limited immunity mandatory thresholds of having registered under the ICO on or before November 13, 2007, notified the City Clerk by February 18, 2011 of their intention to register under the MMO as amended by the TUO, and obtained a City business tax registration for taxation as a medical marijuana collective in 2011 or 2012.

Several entities filed court challenges to, among other provisions of the City's tax codes, the requirement to obtain a City business tax registration for taxation as a medical marijuana collective. If that challenge succeeds and the City is not able to assert the failure to comply with that requirement as a valid basis to deny the limited immunity provided for in the ordinance, then the effect of the draft ordinance would be to prohibit "medical marijuana businesses" defined in the ordinance to exclude dwelling units with fewer than four qualified persons operating at the location and defined health care locations, but instead immunize from enforcement some number equal to or fewer than 157 larger medical marijuana businesses that meet the specified restrictions. The number 157 is the number of 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.

FINDINGS:

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

The General Plan serves as a “constitution for development” in the City. It contains the City's policies regarding, among other matters, character and design, land use, environment, business and economics, services, neighborhood vitality, transportation, and growth issues. The City and its citizens use the General Plan to, among other purposes, evaluate policies and understand long-range plans and strategy for the City and its different geographic areas. The Zoning Code is an essential implementation tool of the General Plan. The purposes of the Zoning Code include segregating incompatible uses, preventing new development from interfering with existing residents or businesses, and preserving the character of a community. Medical marijuana business is not an enumerated use in the Zoning Code.

The draft ordinance prohibits medical marijuana businesses, and prohibits the Zoning Administrator from adding this as an authorized enumerated use or otherwise authorizing the use by variance. The proposed ordinance acts to confirm that medical marijuana businesses are a disallowed activity, and is therefore fully consistent with the General Plan.

The limited immunity from the prohibition in the draft ordinance accommodates the possibility that the California Supreme Court may ultimately rule that cities cannot completely prohibit medical marijuana businesses, and balances, during the interim period of uncertainty in the state of the law, the uncontrolled proliferation of medical marijuana businesses, public safety, and access by seriously ill patients to medical marijuana, pending a definitive decision on whether local government may completely ban medical marijuana businesses. The draft ordinance thereby 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.”

The draft ordinance creates a livable City for existing and future residents and one that is attractive to future investment by (1) controlling the proliferation of medical marijuana businesses, (2) furthering public safety, (3) segregating incompatible uses, preventing new development from interfering with existing residents or businesses, and preserving the character of local communities; and (4) assuring access by seriously ill patients to medical marijuana.

The draft ordinance: (1) controls the proliferation of medical marijuana businesses by providing for immunity only to those that existed as of September 14, 2007, registered or applied to register under the City's prior medical marijuana regulations, and comply with additional restrictions; (2) furthers public safety by providing for immunity only to those that existed as of September 14, 2007 and registered or applied to register under the City's prior medical marijuana regulations, separating those businesses from incompatible uses, and providing a limited immunity to only those medical marijuana

businesses that meet a strict set of safety related restrictions including limitations upon operating hours, activities at the site, hiring or admitting managers affiliated with other medical marijuana business in the City, location relative to residential zones and sensitive uses, and background checks; (3) segregates incompatible uses, prevents new development from interfering with existing residents or businesses, and preserves the character of local communities, by providing for immunity only to those that existed as of September 14, 2007 and registered or applied to register under the City's prior medical marijuana regulations, separating those businesses from incompatible uses, and providing a limited immunity to only those medical marijuana businesses that meet a strict set of safety related restrictions; and (4) assures access by seriously ill patients to medical marijuana by providing for a limited immunity from its prohibition for a limited number of businesses that do not violate its specified restrictions.

- Economic Development goal 7B to create "a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base."

The draft ordinance creates a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base for the same reasons stated above, by balancing the uncontrolled proliferation of medical marijuana businesses, public safety, and access by seriously ill patients to medical marijuana. It advances these policies by segregating incompatible uses, preventing new development from interfering with existing residents or businesses, and preserving the character of local communities.

- 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."

The draft ordinance establishes 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, also for the same reasons stated above, by balancing the uncontrolled proliferation of medical marijuana businesses, public safety, and access by seriously ill patients to medical marijuana.

- Economic Development goal 7D to create "a City able to attract and maintain new land uses and businesses."

The draft ordinance creates a City able to attract and maintain new land uses and businesses, also for the same reasons stated above, by balancing the uncontrolled proliferation of medical marijuana businesses, public safety, and access by seriously ill patients to medical marijuana.

2. 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 consistent with federal law; (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in the City; (4) restricts the uncontrolled proliferation of medical marijuana businesses; (5) segregates incompatible land uses and preserves the character of local communities by providing a limited immunity to only those medical marijuana businesses that meet a strict set of safety related restrictions including limitations upon operating hours, activities at the site, hiring or admitting persons affiliated with other medical marijuana business in the City, location relative to residential zones and sensitive uses; and background checks; (6) assures access by seriously ill patients to medical marijuana by providing limited immunities for those collectives that existed as of September 14, 2007, and meet the other restrictions in the ordinance;

Conformity With Public Convenience: The proposed ordinance is in conformity with public convenience for the same reasons as stated above, because it: (1) prohibits rather than authorizes medical marijuana businesses consistent with federal law; (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in the City; (4) restricts the uncontrolled proliferation of medical marijuana businesses; (5) segregates incompatible land uses and preserves the character of local communities by providing a limited immunity to only those medical marijuana businesses that meet a strict set of safety related restrictions including limitations upon operating hours, activities at the site, hiring or admitting persons affiliated with other medical marijuana business in the City, location relative to residential zones and sensitive uses; and background checks; and (6) assures access by seriously ill patients to medical marijuana by providing limited immunities for those collectives that existed as of September 14, 2007, and meet the other restrictions in the ordinance;

Conformity With General Welfare: The proposed ordinance is in conformity with general welfare for the same reasons as stated above, because it: (1) prohibits rather than authorizes medical marijuana businesses consistent with federal law; (2) is required to prevent the continuing drain of litigation against the City; (3) ends the unregulated proliferation of medical marijuana businesses in the City; (4) restricts the uncontrolled proliferation of medical marijuana businesses; (5) segregates incompatible land uses and preserves the character of local communities by providing a limited immunity to only those medical marijuana businesses that meet a strict set of safety related restrictions including limitations upon operating hours, activities at the site, hiring or admitting persons affiliated with other medical marijuana business in the City, location relative to residential zones and sensitive uses; and background checks; and (6) assures access by seriously ill patients to medical marijuana by providing limited immunities for those collectives that existed as of September 14, 2007, and meet the other restrictions in the ordinance;

Conformity With Good Zoning Practice: The proposed ordinance is in conformity with good zoning practice by: (1) prohibiting medical marijuana businesses which are not an enumerated use in the Zoning Code; (2) restricting the uncontrolled proliferation of medical marijuana businesses; and (3) segregating incompatible land uses and preserves the character of local communities by providing a limited immunity to only those medical marijuana businesses that meet a strict set of safety related restrictions, which include locating at minimum distances from designated sensitive uses including schools, public parks, religious institutions, and other medical marijuana businesses.

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 (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, 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 (2nd 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 (I) 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 _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
JANE USHER

Special Assistant City Attorney

Date 1/25/13

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.


Michael LoGrande
Director of Planning

File No. _____

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 _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

C.F. No. _____

ORDINANCE NO. _____

An ordinance calling a Special Election to be held on Tuesday, May 21, 2013, for the purpose of submitting to the qualified voters of the City of Los Angeles a certain ordinance and to consolidate this Special Election with the City's General Municipal Election to be held on the same date.

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

Section 1. A Special Election is hereby called to be held in the City of Los Angeles on May 21, 2013, for the purpose of submitting to the qualified voters of the City a certain measure ordered to be placed on the ballot by the Council of the City of Los Angeles pursuant to an initiative petition.

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

**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?

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

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

Sec. 5. The Special Election hereby called shall be, and hereby is ordered to be, consolidated with the City's General Municipal Election to be held in the City of Los Angeles on Tuesday, May 21, 2013.

Sec. 6. The voting polls on election day shall open at 7:00 a.m., May 21, 2013, and shall remain open until 8:00 p.m. of the same day when the voting polls shall be closed, except as provided in City Election Code Section 857.

Sec. 7. The election precincts, polling places, and officers of election for the Special Election shall be the same as those provided in the City of Los Angeles for the General Municipal Election, and the election shall be held in all respects as if there were only one election. Furthermore, for the precincts, polling places, and officers of election, reference is hereby made to the list that will be prepared and approved by the City Clerk and filed in the City Clerk's Office not later than April 21, 2013, and that list is incorporated into and made part of this ordinance.

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

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

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

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By *Harit U. Trivedi (HUT)*
HARIT U. TRIVEDI
Deputy City Attorney

Date *Jan. 25, 2013*

File No. CF 11-1737-S4