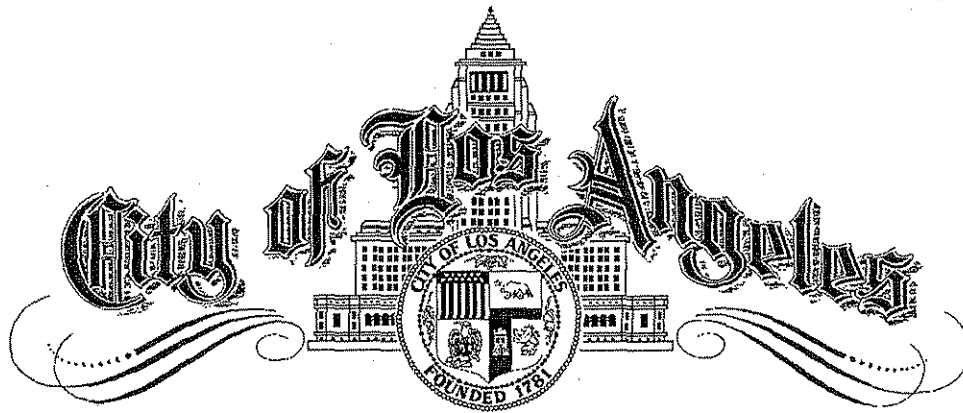


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**CARMEN A. TRUTANICH**  
City Attorney

REPORT NO. R 1 3 - 0 0 3 2  
JAN 1 8 2013

**REPORT RE:**

**DRAFT ORDINANCES AND RESOLUTIONS PURSUANT TO  
CHARTER SECTION 452 REGARDING ACTION BY CITY COUNCIL ON  
CERTIFIED INITIATIVE PETITION REGARDING MEDICAL MARIJUANA**

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

Honorable Members:

The City Clerk has presented to your Honorable Body a certified initiative petition related to medical marijuana collectives submitted by proponents Freddie J. Metcalf, William Rusbosin, Norma A. Schaffer, Linda Leek and Gary Carver. In connection with the City Clerk's transmittal, this Office has prepared and now transmits the enclosed draft ordinances and resolutions pursuant to Charter Section 452 regarding action by the City Council upon presentation of a certified initiative petition.

Background

On December 7, 2012, a group of proponents submitted an initiative petition to the City Clerk containing voter signatures in support of a proposed ordinance that would regulate associations where six or more qualified patients and/or primary caregivers gather to cultivate, distribute or engage in other activities related to medical marijuana (MMCs). In general, the proposed initiative would limit the number of MMCs where six or more patients and/or caregivers gather to those that have operated since September 2007, registered with the City and meet other requirements. The initiative also would establish operational standards enforceable as infractions. The initiative contains exemptions for associations of five or fewer qualified patients and/or primary caregivers

who cultivate medical marijuana on-site for MMCs, their patients or themselves, as well as other exemptions.

On December 18, 2012, the City Clerk completed its preliminary review of the initiative petition and accepted it for processing. The City Clerk thereafter examined the voter signatures contained on the petition using the random sampling method authorized in the City Election Code and in accordance with Charter Section 451. The City Clerk has now completed that examination and has determined that the initiative petition contains a sufficient number of valid voter signatures to qualify for presentation to the City Council. The City Clerk certified the petition as sufficient on December 28, 2012, and presented the certified petition to Council on January 3, 2013.

### Council Options

Charter Sections 450-452 provide that, when a valid and certified initiative petition requesting adoption of a proposed ordinance is presented to the City Council, the City Council must take one of the following actions within 20 days after the presentation of a valid certified petition:

- Adopt the proposed ordinance without alteration.
- Call a special stand-alone election, which must be held no earlier than 110 days but no later than 140 days after the Council acts, to submit the proposed ordinance to a vote of the electors of the City.
- Determine to submit the proposed ordinance to a vote at the next regular City election or the next County election conducted in the territory of the City occurring more than 110 days from the date of Council action, whichever is earlier.

Should the Council wish to adopt the proposed ordinance without alteration, we have attached the ordinance proposed in the initiative. (See Option A Attachment.) Should the Council wish to submit the proposed ordinance to the voters, we have attached an election ordinance and ballot resolutions to place the measure on the ballot at the City's General Municipal Election to be held on May 21, 2013. (See Option B Attachment.)<sup>1</sup> These election documents include a ballot title for the measure.

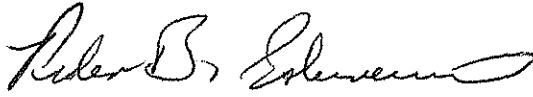
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<sup>1</sup> Please note that we have not transmitted documents for a special stand-alone election because the option of holding an election on the proposed ordinance can be accomplished by consolidating the election with the City's regularly-scheduled May 21, 2013, General Municipal Election as noted in the City Clerk's report.

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:JEU:pj  
Transmittal

**OPTION A**

**ORDINANCE NO. \_\_\_\_\_**

An ordinance proposed by initiative petition regulating medical marijuana collectives.

**THE MEDICAL MARIJUANA REGULATION AND CONTROL ACT**

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

**Section 1. TITLE.**

This ordinance shall be known and may be cited as the Medical Marijuana Regulation and Control Act.

**Section 2. FINDINGS AND DECLARATIONS.**

The people of the City of Los Angeles hereby find and declare that:

A. In 1996, California voters approved Proposition 215 (The Compassionate Use Act), which legalized the use of cannabis for medical purposes and allows persons to grow or possess cannabis based on the recommendation of a licensed physician.

B. The State enacted supplemental medical cannabis legislation, Senate Bill 420, which was intended to clarify the application and scope of the Compassionate Use Act and enhance the access of qualified patients and primary caregivers to medical cannabis through collective, cooperative cultivation projects.

C. As medical cannabis dispensaries continue to proliferate, so do citizen complaints and the risks these dispensaries pose to our communities. Across the state, law enforcement agencies have identified cannabis dispensaries as hubs for illegal activity that abuse medical cannabis laws and operate without regard to regulations, including wage and hour protections and workplace health and safety laws.

D. Some medical cannabis dispensaries have been known to operate and advertise in and or close to schools, unlawfully sell cannabis for profit that is later resold in communities, lack the medical expertise to be able to properly dispense cannabis, and sell cannabis to individuals without any legal medical documentation. At the same time, there are a number of long-standing medical marijuana collectives that assiduously adhere to State law.

E. There are conflicting reports as to whether medical marijuana collectives increase crime. The Los Angeles Police Department (LAPD) has reported anecdotally that, as the number of cannabis dispensaries and commercial growing operations continues to proliferate, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated cannabis

businesses. Conversely, academic institutions like the University of California Los Angeles have determined that there is no observed association between medical marijuana collectives and either violent or property crimes.

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

G. The City's regulatory efforts were the subject of numerous lawsuits filed by both the City of Los Angeles and the medical marijuana collectives. These lawsuits have been, and continue to be, an unproductive use of the City's resources.

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

I. In *County of Los Angeles v. Alternative Medicinal Cannabis Collective et al.*, the Court of Appeal, Second District, ruled that a ban on cannabis collectives is not consistent with the Medical Marijuana Program Act (MMPA). In striking down the Los Angeles County ban, the Court of Appeal held that a ban would frustrate the MMPA's goals of enhancing access through collective and cooperative cultivation projections and ensuring that all seriously ill Californians have the right to use and obtain cannabis for medical purposes. This case has been granted review by the California Supreme Court.

J. In *420 Caregivers, LLC et al. v. City of Los Angeles*, Division 8 of the Court of Appeal, Second District, reversed in full a preliminary injunction against the enforcement of the City of Los Angeles MMO which limited the number and location of medical cannabis dispensaries within its borders. The Second District disagreed that the ordinance violated federal equal protection rights, concluding that "grandfather provisions," such as the one at issue, had been upheld in other courts. Since then however, the Supreme Court has granted review of the case. This act has called into questions the rulings made at the appellate level.

K. On August 6, 2012, an ordinance (Ordinance No. 182190) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code, in response to recent appellate court decisions, by prohibiting medical cannabis businesses, while preserving the limited state law medical cannabis criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical cannabis legislation consistent with that judicial guidance, was signed by the Mayor.

L. On September 17, 2012 the Los Angeles City Clerk sent the Los Angeles City Council a "Certification of Sufficiency" of a Referendum Petition to Repeal Ordinance No. 182190. The Referendum Petition entitled Referendum Against Ordinance No. 182190 Passed by the City Council, containing 49,021 pre-verified signatures, was filed with the Office of the City Clerk on August 30, 2012. After random sampling of five percent of signatures, the Clerk deemed that 110 percent or more of the required signatures were valid, satisfying the threshold to declare the petition sufficient. The Certification of the referendum negates the implementation of the ordinance and creates a legislative vacuum in which the medical cannabis businesses continue to operate virtually unchecked.

M. The City of Los Angeles has a compelling interest in ensuring that cannabis is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical cannabis collectives operate, and in providing compassionate access to medical cannabis to its seriously ill residents.

### Section 3. AMENDMENT OF ARTICLE 5.1 OF CHAPTER IV OF THE LOS ANGELES MUNICIPAL CODE

Article 5.1 of Chapter IV of the Los Angeles Municipal Code is hereby amended as follows:

#### **SEC. 45.19.6. PURPOSES AND INTENT.**

The City of Los Angeles has a compelling interest in ensuring that medical marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and collectives, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its seriously ill residents.

#### **SEC. 45.19.6.1. DEFINITIONS.**

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

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

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

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

“Medical marijuana collective” means either of the following:

(1) An association of six (6) or more qualified patients, persons with identification cards, or primary caregivers, who gather in a location collectively or cooperatively to cultivate, process, distribute, deliver or give away marijuana to its members for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5 *et seq.*

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

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

(a) An association of five (5) or fewer qualified patients, persons with an identification card, and/or primary caregivers who process or collectively or cooperatively cultivate marijuana on-site for their own personal medical use, for a medical marijuana collective or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*;

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

(c) Any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a



hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or

(d) Any vehicle during only that time reasonably required for its use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport, distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765.

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

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

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

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

#### **SEC. 45.19.6.2. PROHIBITED ACTIVITIES.**

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

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

### **SEC. 45.19.6.3. LIMITED IMMUNITY.**

The use of any building, structure, location, premises or land for a medical marijuana collective is not currently listed in the Los Angeles Municipal Code as a permitted use in any zone. Further, for so long as this ordinance 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 collective may be permitted in any zone.

Notwithstanding the activities prohibited by this article, and notwithstanding that medical marijuana collective is not and shall not become a permitted use in the City for so long as this article remains in effect, a medical marijuana collective shall not be subject to the remedies set forth in Los Angeles Municipal Code Section 11.00 solely on the basis of: (1) an activity prohibited by Section 45.19.6.2; and (2) the fact that medical marijuana collective 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 this article remains in effect and only by a medical marijuana collective that does not violate any of the restrictions contained in this section:

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

B. Every medical marijuana collective is prohibited that did not timely register with the City of Los Angeles under two of the three of the following registrations:

1. Interim Control Ordinance (ICO) No. 179027 Registration;
2. Notice of Intent to Register (NOIR) under Ordinance Nos. 181069 and 181157 in June 2010;
3. Notice of Intent to Register under Temporary Urgency Ordinance No. 181530 in February 2011.

In the event any of these registration events is deemed unenforceable, then the validity of the other registration events in this subsection shall remain in full force and effect. In the event two of the registration events are deemed unenforceable, the number of registrations required under this subsection shall be reduced to one. For purposes of this subsection, registration under Interim

Control Ordinance No. 179027 shall not include the filing of a "hardship application" unless such application was granted by the City Council.

C. Every medical marijuana collective is prohibited that ceased or ceases operation in the City for 90 continuous days. For purposes of this subsection, a medical marijuana collective shall not have ceased operations during the time period it reasonably takes to move to a new location, or if it ceased operating in response to a warning letter from the Federal government or any of its agencies, including the Drug Enforcement Agency or Department of Justice;

D. Every medical marijuana collective is prohibited that provides public ingress or egress to its building on any side of the location that abuts, is across an alley or walkway from, or has a common corner with a residential zoned lot. For purposes of this subsection, the term residential zoned lot shall not include mixed use buildings in commercial or industrial zones;

E. Every medical marijuana collective is prohibited whose operators, managers, and employees do not successfully pass an annual LAPD LiveScan background check by January 31 of each year. A failed LAPD LiveScan is any 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.

F. Every medical marijuana collective is prohibited that is located within a 1,000-foot radius of a school or a 600-foot radius of a public park, public library, licensed child care facility, youth center, substance abuse rehabilitation center, or religious institution with a current and valid Certificate of Occupancy as a Church or House of Worship. 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, licensed child care facility, youth center, or substance abuse rehabilitation center, to the closest property line of the lot on which the medical marijuana collective is located without regard to intervening structures. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) a medical marijuana collective that violates the distance requirements because a sensitive use locates within the 1000-foot radius or 600-foot radius of the medical marijuana collective after the date on which the City issued a City collective tax registration or tax exemption certificate to the medical marijuana collective for its location. This subsection shall become effective 300 days after the adoption of this Ordinance.

The limited immunity provided by this section shall not be asserted as an affirmative defense by any medical marijuana collective that violates any City law except as expressly immunized by this article.

**SEC. 45.19.6.4. ADDITIONAL RESTRICTIONS.**

The violation of any subsection herein shall constitute an infraction.

A. Every medical marijuana collective is prohibited from operating between the hours of 8 PM and 10 AM. These hours may be amended by the City Council to increase the allowable operating hours;

B. Every medical marijuana collective is prohibited where marijuana and/or alcohol are consumed by the medical marijuana collective at its premises or where alcoholic beverages are dispensed by the medical marijuana collective on the premises;

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

D. Every medical marijuana collective is prohibited where marijuana is visible from the exterior of the premises;

E. Every medical marijuana collective is prohibited that has any exterior sign for the medical marijuana collective on the premises larger than 14 square feet;

F. Every medical marijuana collective is prohibited that has any exterior sign for the medical marijuana collective that is internally or externally lit between the hours of 8PM and 10AM;

G. Every medical marijuana collective is prohibited that does not have a posted legible indoor sign in a conspicuous location with the following warnings:

- i. That the diversion of marijuana for non-medical purposes is a violation of State law;
- ii. That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery; and
- iii. That loitering on and around the dispensary site is prohibited by California Penal Code Section 647(e).

H. Every medical marijuana collective is prohibited that illuminates the exterior of its premises during closure hours set forth in Section A. herein, except for such lighting that is reasonably utilized for the security of the premises;

I. Every medical marijuana collective is prohibited that does not have a closed circuit security camera system that records the exterior activities of the premises 24 hours a day;

J. Every medical marijuana collective is prohibited that does not have on its premises a security guard with a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services.

K. Every medical marijuana collective is prohibited that allows noxious or offensive odors to emanate from its location.

#### **SEC. 45.19.6.5. FUTURE LEGAL DEVELOPMENTS.**

The issue of whether a municipality may affirmatively regulate medical marijuana collectives is an unsettled question of law. If in the future the California State Legislature or the California Supreme Court holds that a municipality may affirmatively regulate medical marijuana collectives through the use of affirmative permits or licenses, the City Council may amend this ordinance to allow for such permits or licenses, subject to the limitation that each and every medical marijuana collective entitled to claim the Limited Immunity under this Ordinance at the time of such amendment shall be issued a permit or license.

#### **Section 4. SEVERABILITY**

If any provision or portion of a provision, section, and subsection or the application thereof of this Ordinance is found to be unconstitutional, unenforceable, or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this Ordinance which can be implemented without the invalid provisions, and, to this end, the provisions of this Ordinance are declared to be severable.

#### **Section 5. COMPETING MEASURES.**

In the event that this measure and another measure or measures relating to the same subject matter appear on the same City-wide ballot, the provisions of the other measure or measures shall be deemed 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 over conflicting provisions in any other measure, and the conflicting provisions of the other measure or measures shall be null and void.

#### **Section 6. LIBERAL CONSTRUCTION**

The provisions of this Act shall be liberally construed to effectuate its purposes.

Section 7. EFFECTIVE DATE

This Act shall be effective upon its passage.

Sec. 8. 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 \_\_\_\_\_

Date \_\_\_\_\_

File No. \_\_\_\_\_

**OPTION B**



## RESOLUTION

**WHEREAS**, the Council of the City of Los Angeles has taken action pursuant to an initiative petition to place a certain initiative 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. LIMIT NUMBER OF COLLECTIVES WHERE SIX OR MORE PATIENTS/CAREGIVERS GATHER TO THOSE THAT OPERATED SINCE SEPTEMBER 2007, REGISTERED AND MEET OTHER REQUIREMENTS. ESTABLISH OPERATIONAL STANDARDS ENFORCED AS INFRACTIONS. EXEMPT FIVE OR FEWER PATIENTS/CAREGIVERS CULTIVATING MEDICAL MARIJUANA FOR COLLECTIVES, THEIR PATIENTS OR THEMSELVES FROM REGULATION. INITIATIVE ORDINANCE \_\_\_\_.**

Shall an ordinance regulating associations of six or more qualified patients and/or primary caregivers who gather to cultivate, distribute or engage in other activities related to marijuana for medical purposes (MMCs) by: (1) prohibiting MMCs but providing limited immunity for MMCs that operated since September 2007, timely registered with the City, generally have not ceased operations for 90 days, pass annual background checks, are separated from residential zones, maintain certain distances from schools, parks, child care facilities and other designated places, and satisfy other requirements; (2) establishing operational standards enforceable as infractions; and (3) exempting associations of five or fewer patients/caregivers who process or cultivate medical marijuana on-site for MMCs, their patients or themselves, and other exemptions; 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. \_\_\_\_\_

## RESOLUTION

Resolution providing that an initiative ordinance 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 initiative 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. \_\_\_\_\_

### THE MEDICAL MARIJUANA REGULATION AND CONTROL ACT

The people of the City of Los Angeles do ordain as follows:

#### Section 1. TITLE.

This ordinance shall be known and may be cited as the Medical Marijuana Regulation and Control Act.

#### Section 2. FINDINGS AND DECLARATIONS.

The people of the City of Los Angeles hereby find and declare that:

A. In 1996, California voters approved Proposition 215 (The Compassionate Use Act), which legalized the use of cannabis for medical purposes and allows persons to grow or possess cannabis based on the recommendation of a licensed physician.

B. The State enacted supplemental medical cannabis legislation, Senate Bill 420, which was intended to clarify the application and scope of the Compassionate Use Act and enhance the access of qualified patients and primary caregivers to medical cannabis through collective, cooperative cultivation projects.

C. As medical cannabis dispensaries continue to proliferate, so do citizen complaints and the risks these dispensaries pose to our communities. Across the state, law enforcement agencies have identified cannabis dispensaries as hubs for illegal activity that abuse medical cannabis laws and operate without regard to regulations, including wage and hour protections and workplace health and safety laws.

D. Some medical cannabis dispensaries have been known to operate and advertise in and or close to schools, unlawfully sell cannabis for profit that is later resold in communities, lack the medical expertise to be able to properly dispense cannabis,

and sell cannabis to individuals without any legal medical documentation. At the same time, there are a number of long-standing medical marijuana collectives that assiduously adhere to State law.

E. There are conflicting reports as to whether medical marijuana collectives increase crime. The Los Angeles Police Department (LAPD) has reported anecdotally that, as the number of cannabis dispensaries and commercial growing operations continues to proliferate, the City and its neighborhoods have experienced an increase in crime and the negative secondary harms associated with unregulated cannabis businesses. Conversely, academic institutions like the University of California Los Angeles have determined that there is no observed association between medical marijuana collectives and either violent or property crimes.

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

G. The City's regulatory efforts were the subject of numerous lawsuits filed by both the City of Los Angeles and the medical marijuana collectives. These lawsuits have been, and continue to be, an unproductive use of the City's resources.

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

I. In *County of Los Angeles v. Alternative Medicinal Cannabis Collective et al.*, the Court of Appeal, Second District, ruled that a ban on cannabis collectives is not consistent with the Medical Marijuana Program Act (MMPA). In striking down the Los Angeles County ban, the Court of Appeal held that a ban would frustrate the MMPA's goals of enhancing access through collective and cooperative cultivation projections and ensuring that all seriously ill Californians have the right to use and obtain cannabis for medical purposes. This case has been granted review by the California Supreme Court.

J. In *420 Caregivers, LLC et al. v. City of Los Angeles*, Division 8 of the Court of Appeal, Second District, reversed in full a preliminary injunction against the enforcement of the City of Los Angeles MMO which limited the number and location of medical cannabis dispensaries within its borders. The Second District disagreed that the ordinance violated federal equal protection rights, concluding that "grandfather provisions," such as the one at issue, had been upheld in other courts. Since then however, the Supreme Court has granted review of the case. This act has called into

questions the rulings made at the appellate level.

K. On August 6, 2012, an ordinance (Ordinance No. 182190) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code, in response to recent appellate court decisions, by prohibiting medical cannabis businesses, while preserving the limited state law medical cannabis criminal immunities, until such time as the California Supreme Court rules regarding what cities can and cannot regulate and the City enacts new medical cannabis legislation consistent with that judicial guidance, was signed by the Mayor.

L. On September 17, 2012 the Los Angeles City Clerk sent the Los Angeles City Council a "Certification of Sufficiency" of a Referendum Petition to Repeal Ordinance No. 182190. The Referendum Petition entitled Referendum Against Ordinance No. 182190 Passed by the City Council, containing 49,021 pre-verified signatures, was filed with the Office of the City Clerk on August 30, 2012. After random sampling of five percent of signatures, the Clerk deemed that 110 percent or more of the required signatures were valid, satisfying the threshold to declare the petition sufficient. The Certification of the referendum negates the implementation of the ordinance and creates a legislative vacuum in which the medical cannabis businesses continue to operate virtually unchecked.

M. The City of Los Angeles has a compelling interest in ensuring that cannabis is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical cannabis collectives operate, and in providing compassionate access to medical cannabis to its seriously ill residents.

### Section 3. AMENDMENT OF ARTICLE 5.1 OF CHAPTER IV OF THE LOS ANGELES MUNICIPAL CODE

Article 5.1 of Chapter IV of the Los Angeles Municipal Code is hereby amended as follows:

#### **SEC. 45.19.6. PURPOSES AND INTENT.**

The City of Los Angeles has a compelling interest in ensuring that medical marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and collectives, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its seriously ill residents.

#### **SEC. 45.19.6.1. DEFINITIONS.**

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

construed as defined in Section 11.01 and 12.03 of this Code.

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

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

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

“Medical marijuana collective” means either of the following:

(1) An association of six (6) or more qualified patients, persons with identification cards, or primary caregivers, who gather in a location collectively or cooperatively to cultivate, process, distribute, deliver or give away marijuana to its members for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5 *et seq.*

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

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

(a) An association of five (5) or fewer qualified patients, persons with an identification card, and/or primary caregivers who process or collectively or cooperatively cultivate marijuana on-site for their own personal medical use, for a medical marijuana collective or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*;

(b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification

card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;

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

(d) Any vehicle during only that time reasonably required for its use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport, distribute, deliver, or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765.

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

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

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

“Hospice”;

“Identification card”;

“Person with an identification card”;

“Primary caregiver”; and  
“Qualified patient”.

#### **SEC. 45.19.6.2. PROHIBITED ACTIVITIES.**

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

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

#### **SEC. 45.19.6.3. LIMITED IMMUNITY.**

The use of any building, structure, location, premises or land for a medical marijuana collective is not currently listed in the Los Angeles Municipal Code as a permitted use in any zone. Further, for so long as this ordinance 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 collective may be permitted in any zone.

Notwithstanding the activities prohibited by this article, and notwithstanding that medical marijuana collective is not and shall not become a permitted use in the City for so long as this article remains in effect, a medical marijuana collective shall not be subject to the remedies set forth in Los Angeles Municipal Code Section 11.00 solely on the basis of: (1) an activity prohibited by Section 45.19.6.2; and (2) the fact that medical marijuana collective 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 this article remains in effect and only by a medical marijuana collective that does not violate any of the restrictions contained in this section:

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

B. Every medical marijuana collective is prohibited that did not timely register with the City of Los Angeles under two of the three of the following registrations:

1. Interim Control Ordinance (ICO) No. 179027 Registration;
2. Notice of Intent to Register (NOIR) under Ordinance Nos.



181069 and 181157 in June 2010;

3. Notice of Intent to Register under Temporary Urgency Ordinance No. 181530 in February 2011.

In the event any of these registration events is deemed unenforceable, then the validity of the other registration events in this subsection shall remain in full force and effect. In the event two of the registration events are deemed unenforceable, the number of registrations required under this subsection shall be reduced to one. For purposes of this subsection, registration under Interim Control Ordinance No. 179027 shall not include the filing of a "hardship application" unless such application was granted by the City Council.

C. Every medical marijuana collective is prohibited that ceased or ceases operation in the City for 90 continuous days. For purposes of this subsection, a medical marijuana collective shall not have ceased operations during the time period it reasonably takes to move to a new location, or if it ceased operating in response to a warning letter from the Federal government or any of its agencies, including the Drug Enforcement Agency or Department of Justice;

D. Every medical marijuana collective is prohibited that provides public ingress or egress to its building on any side of the location that abuts, is across an alley or walkway from, or has a common corner with a residential zoned lot. For purposes of this subsection, the term residential zoned lot shall not include mixed use buildings in commercial or industrial zones;

E. Every medical marijuana collective is prohibited whose operators, managers, and employees do not successfully pass an annual LAPD LiveScan background check by January 31 of each year. A failed LAPD LiveScan is any 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.

F. Every medical marijuana collective is prohibited that is located within a 1,000-foot radius of a school or a 600-foot radius of a public park, public library, licensed child care facility, youth center, substance abuse rehabilitation center, or religious institution with a current and valid Certificate of Occupancy as a Church or House of Worship. 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, licensed child care facility, youth center, or substance abuse rehabilitation center, to the closest property line of the lot on which the medical marijuana collective is located without regard to intervening structures. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) a medical marijuana collective that violates the distance requirements because a sensitive use locates within the

1000-foot radius or 600-foot radius of the medical marijuana collective after the date on which the City issued a City collective tax registration or tax exemption certificate to the medical marijuana collective for its location. This subsection shall become effective 300 days after the adoption of this Ordinance.

The limited immunity provided by this section shall not be asserted as an affirmative defense by any medical marijuana collective that violates any City law except as expressly immunized by this article.

#### **SEC. 45.19.6.4. ADDITIONAL RESTRICTIONS.**

The violation of any subsection herein shall constitute an infraction.

A. Every medical marijuana collective is prohibited from operating between the hours of 8 PM and 10 AM. These hours may be amended by the City Council to increase the allowable operating hours;

B. Every medical marijuana collective is prohibited where marijuana and/or alcohol are consumed by the medical marijuana collective at its premises or where alcoholic beverages are dispensed by the medical marijuana collective on the premises;

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

D. Every medical marijuana collective is prohibited where marijuana is visible from the exterior of the premises;

E. Every medical marijuana collective is prohibited that has any exterior sign for the medical marijuana collective on the premises larger than 14 square feet;

F. Every medical marijuana collective is prohibited that has any exterior sign for the medical marijuana collective that is internally or externally lit between the hours of 8PM and 10AM;

G. Every medical marijuana collective is prohibited that does not have a posted legible indoor sign in a conspicuous location with the following warnings:

- i. That the diversion of marijuana for non-medical purposes is a violation of State law;
- ii. That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery; and

- iii. That loitering on and around the dispensary site is prohibited by California Penal Code Section 647(e).

H. Every medical marijuana collective is prohibited that illuminates the exterior of its premises during closure hours set forth in Section A. herein, except for such lighting that is reasonably utilized for the security of the premises;

I. Every medical marijuana collective is prohibited that does not have a closed circuit security camera system that records the exterior activities of the premises 24 hours a day;

J. Every medical marijuana collective is prohibited that does not have on its premises a security guard with a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services.

K. Every medical marijuana collective is prohibited that allows noxious or offensive odors to emanate from its location.

#### **SEC. 45.19.6.5. FUTURE LEGAL DEVELOPMENTS.**

The issue of whether a municipality may affirmatively regulate medical marijuana collectives is an unsettled question of law. If in the future the California State Legislature or the California Supreme Court holds that a municipality may affirmatively regulate medical marijuana collectives through the use of affirmative permits or licenses, the City Council may amend this ordinance to allow for such permits or licenses, subject to the limitation that each and every medical marijuana collective entitled to claim the Limited Immunity under this Ordinance at the time of such amendment shall be issued a permit or license.

#### **Section 4. SEVERABILITY**

If any provision or portion of a provision, section, and subsection or the application thereof of this Ordinance is found to be unconstitutional, unenforceable, or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this Ordinance which can be implemented without the invalid provisions, and, to this end, the provisions of this Ordinance are declared to be severable.

#### **Section 5. COMPETING MEASURES.**

In the event that this measure and another measure or measures relating to the same subject matter appear on the same City-wide ballot, the provisions of the other measure or measures shall be deemed 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 over conflicting provisions in any other measure, and the conflicting provisions of the other measure or measures shall be null and void.

**Section 6. LIBERAL CONSTRUCTION**

The provisions of this Act shall be liberally construed to effectuate its purposes.

**Section 7. EFFECTIVE DATE**

This Act shall be effective upon its passage.

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

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 initiative 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 initiative ordinance 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 initiative ordinance to be submitted to the qualified voters of the City of Los Angeles shall be:

**MEDICAL MARIJUANA REGULATION. LIMIT NUMBER OF COLLECTIVES WHERE SIX OR MORE PATIENTS/CAREGIVERS GATHER TO THOSE THAT OPERATED SINCE SEPTEMBER 2007, REGISTERED AND MEET OTHER REQUIREMENTS. ESTABLISH OPERATIONAL STANDARDS ENFORCED AS INFRACTIONS. EXEMPT FIVE OR FEWER PATIENTS/CAREGIVERS CULTIVATING MEDICAL MARIJUANA FOR COLLECTIVES, THEIR PATIENTS OR THEMSELVES FROM REGULATION. INITIATIVE ORDINANCE \_\_\_\_.**

Shall an ordinance regulating associations of six or more qualified patients and/or primary caregivers who gather to cultivate, distribute or engage in other activities related to marijuana for medical purposes (MMCs) by: (1) prohibiting MMCs but providing limited immunity for MMCs that operated since September 2007, timely registered with the City, generally have not ceased operations for 90 days, pass annual background checks, are separated from residential zones, maintain certain distances from schools, parks, child care facilities and other designated places, and satisfy other requirements; (2) establishing operational standards enforceable as infractions; and (3) exempting associations of five or fewer patients/caregivers who process or cultivate medical marijuana on-site for MMCs, their patients or themselves, and other exemptions; be adopted?

Sec. 3. The initiative ordinance 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 initiative ordinance, that letter or number is hereby adopted and shall be the designation for the ballot title.

Sec. 4. To vote on the initiative ordinance, 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 initiative ordinance and a "No" vote shall be counted against adoption of the initiative ordinance.

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

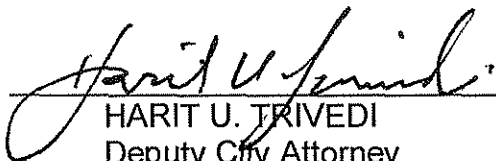
By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  \_\_\_\_\_  
HARIT U. TRIVEDI  
Deputy City Attorney

Date 1/18/13

File No. 13-1300-52