

11-1737-51

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MOTION

Commencing in 2007, more than 850 medical marijuana businesses opened storefront shops and commercial growing operations in the City without any land use approval under the Los Angeles Municipal Code (LAMC). An unknown number of these businesses, estimated to exceed 300, currently operate in Los Angeles without land use authorization, which the LAMC limits to those uses expressly enumerated in the Code. New medical marijuana businesses continue to open on a daily basis, including many located within 600 feet of schools, which is prohibited by State law (California Health & Safety Code Section 11362.768).

California's Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA) seek to enable qualified patients and their primary caregivers to access safe supplies of medical marijuana, while prohibiting sales and ensuring public safety. Consistent with the letter and spirit of these State laws, the City Council enacted a comprehensive measure to cap, geographically distribute, register, and regulate the operations of medical marijuana collectives involving four or more members. The Medical Marijuana Ordinance (MMO), adopted in January 2010, added Article 5.1 to the LAMC; it was amended in January 2011 by the Temporary Urgency Medical Marijuana Ordinance (TUO). These regulations are the subject of more than 50 lawsuits filed against the City by more than 100 operators of medical marijuana businesses.

On October 4, 2011, the Second Appellate District of the Court of Appeal, whose decisions bind the City of Los Angeles, issued its ruling in the case of *Pack v. City of Long Beach*. That ruling calls into question the ability of a municipality to regulate collectives. According to the *Pack* court, cities may enact prohibitions that restrict and limit collectives, but may not enact affirmative regulations that permit or authorize collectives. Regulations that go beyond merely restricting are preempted by federal law because marijuana is banned for all purposes as a Schedule I drug under the federal Controlled Substances Act.

On October 14, 2011, in the *Americans For Safe Access v. City Of Los Angeles* cases challenging the City's MMO and TUO, Superior Court Judge Anthony J. Mohr denied the constitutional challenges and refused to enter a preliminary injunction against the City's TUO. Judge Mohr rejected the plaintiffs' claims that they have vested rights to operate in Los Angeles. However, Judge Mohr did not address federal preemption under *Pack*. He noted that *Pack* "could have a profound impact on the TUO" and left the law "unsettled." Rather than opine on *Pack*, he elected "to wait until *Pack* becomes final or until our Supreme Court decides to weigh on the federal preemption issue."

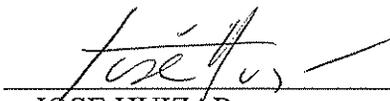
California's four United States Attorneys recently announced federal enforcement actions targeting commercial trafficking, sales, distribution, and cultivation by the State's burgeoning marijuana industry. Similarly, our neighborhoods continue to complain daily about the disruption and public safety issues presented by medical marijuana businesses operating in the City. Yet, implementation of the City's comprehensive medical marijuana regulatory effort, which balances public safety concerns with compassionate access for seriously ill patients, is thwarted by the *Pack* decision.

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I THEREFORE MOVE that the Council request that the City Attorney prepare language to: (1) repeal the MMO and the TUO in light of *Pack*; (2) ban medical marijuana businesses in the City until the *Pack* decision is modified to grant us tools to affirmatively regulate and control medical marijuana businesses; (3) provide amicus support to the City of Long Beach petition for review of *Pack*, affirming the need for California Supreme Court finality regarding the scope of permissible local regulation; and (4) confirm the City's commitment to safe access consistent with State criminal immunities (as provided by the CUA and MMPA) through personal participation in medical marijuana cultivation by qualified patients and their primary caregivers, and not through storefront, mobile, commercial growing, or other dispensing operations, so long as the laws regarding local regulation remain unsettled.

I FURTHER MOVE that this Motion shall be referred to the Public Safety and Planning and Land Use Management Committees for action and return to Council at the earliest possible time.

PRESENTED BY: 
JOSE HUIZAR,
Councilmember, 14th District

SECONDED BY: 

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