

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

WHEREAS, the *Pack* court held, as more particularly stated in the opinion, that while cities may enact prohibitions that restrict and limit medical marijuana businesses, cities are preempted under the CSA from enacting affirmative regulations that permit or authorize medical marijuana businesses and marijuana related activities, and further raised the specter of violation of federal law through the actions of individual city officials, 199 Cal.App.4th 1070, 1091, fn. 27;

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

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

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

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

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

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

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

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

NOW, THEREFORE,

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

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

ARTICLE 5.1

MEDICAL MARIJUANA

SEC. 45.19.6. PURPOSES AND INTENT.

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

SEC. 45.19.6.1. DEFINITIONS.

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

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

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

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

"Medical marijuana business" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 45.19.6.2. PROHIBITED ACTIVITIES.

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

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

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

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

SEC. 45.19.6.4. NO VESTED OR NONCONFORMING RIGHTS.

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

SEC. 45.19.6.5. DUE PROCESS AND ENFORCEMENT.

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

SEC. 45.19.6.6. SEVERABILITY.

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

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of JUL 24 2012.

JUNE LAGMAY, City Clerk

By *Pat Y. Palt* Deputy

Approved AUG 01 2012

[Signature] Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By *Larry Kaufman* *for*
JANE USHER
Special Assistant City Attorney

Date MAY 25 2012

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

May 25, 2012

See attached report.

File No. CF 11-1737 and 11-1737-S1

Michael LoGrande
Michael LoGrande
Director of Planning *(CR)*