


CITY OF VALLEJO
OFFICE OF THE CITY MANAGER

March 16, 2012

TO: Mayor and Members of the City Council

FROM: Dan Keen, City Manager 

SUBJECT: UPDATE REGARDING REGULATION OF MEDICAL MARIJUANA
ESTABLISHMENTS AND ENFORCEMENT OF EXISTING CITY ORDINANCES
AND STATE LAW

This memorandum provides the City Council with a status report on staff's implementation of policies aimed at controlling medical marijuana establishments. The report addresses the status of regulatory, tax and enforcement efforts.

Municipalities and citizens throughout the State of California continue to struggle with how to best move forward in light of the confusion surrounding this subject. Medical marijuana provides a valuable service to certain medical patients. And yet, staff also receives many complaints about the negative impact of dispensaries on the quality of life in certain neighborhoods. Staff's efforts have been complicated by a rash of recent, conflicting State Court rulings. Additionally, the Federal government (Office of the United States Attorney for the Eastern Northern, Central and Southern Districts of California) has become more aggressive in its opposition to any sales of medical marijuana, and have stated that they intend to increase their civil and criminal prosecutions of these establishments, including the owners of properties who rent, lease, or otherwise allow these establishments to operate.

Staff continues to attempt to enforce the law regarding illegal dispensary activity in Vallejo while remaining ready to pursue a regulatory program for the distribution of medical marijuana, dependent upon future actions of the California Supreme Court described later in this memorandum.

1. Why has the Vallejo Police Department conducted recent raids of dispensaries?

In 2008, the California Attorney General's office established regulations for the lawful operation of medical marijuana dispensaries. Subsequently, enforcement guidelines were promulgated by the Solano County District Attorney's Office. In the guidelines, Proposition 215 (The Compassionate Use Act of 1996) was addressed, as well as Senate Bill 420 (The Medical Marijuana Program Act). Among the most notable requirements for lawful operation of dispensaries are the following:

- The earnings of the "cooperative or collective" must be used for the general welfare of the members or equally distributed to the members.
- The "cooperative or collective" must have written membership applications on file.
- Marijuana must be acquired only from constituent members.
- Possession quantity guidelines must be followed.

During the discussion of this issue with the City Council at the September 27, 2011 Council meeting, it was noted that staff would continue steps to facilitate more vigorous prosecution of illegal medical marijuana operations in Vallejo (see Attachment A). On January 17, 2012 (in the

Memorandum - Update Regarding Regulation of Medical Marijuana Establishments and Enforcement of Existing City Ordinances and State Law

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staff report setting the rate of taxation), staff again noted the steps being taken by the Vallejo Police Department to assist and coordinate efforts by federal state and regional law enforcement to address illegal medical marijuana operations in Vallejo (see Attachment B). Since these meetings, Police Department personnel have monitored the activities of the dispensaries, and determined that dispensaries in Vallejo were not operating in accordance with the regulatory rules established by the Attorney General's Office or the District Attorney. Specifically, these violations were confirmed through surveillance and other investigative techniques:

- Excessive amounts of marijuana on the premises.
- Large amounts of cash in bank accounts.
- Retail sales – Individual non-member purchases allowed as verified through “customer” interviews.
- Retail sales – Verified by “controlled” purchases using outside agency officers.
- Failure to follow City zoning and business regulations, including illegal building modifications.

According to the District Attorney, the Compassionate Use Act provides only a limited affirmative defense to marijuana patients and their primary caregivers for the “individual possession, individual cultivation and individual transportation of marijuana”. The District Attorney has stated specifically that “police officers can still arrest anyone who grows too much marijuana and who tries to sell it”.

Acting with authority from City Manager Phil Batchelor, and consistent with the information previously provided to the City Council concerning vigorous enforcement of regulatory requirements, the Police Department obtained search warrants and subsequently searched three dispensaries. These actions revealed that multiple violations of State law were occurring at each dispensary, including the following:

- Business records substantiating retail sales.
- Prohibited food products containing marijuana.
- Cash concealed on the premises.
- Operation of illegal growing facilities in a residential area.
- Weapons stored on the premises.
- Possession of other illegal drugs.

Inquiries have been received from City Council members and members of the public concerning the involvement of the United States Drug Enforcement Administration (DEA) in these searches. The DEA was involved in the first executed search warrant, primarily as a result of an existing relationship that exists between the Police Department and the DEA. A member of the Police Department's staff serves on a regional DEA task force. When the Police Department decided to move forward with execution of search warrants, the Department turned to the DEA as a resource to assist with the first searched facility. It should be noted that a number of other State and Federal agencies have been working with the Department on this issue, including the United States Attorney's Office Eastern District of California, the State of California Board of Equalization, the State of California Franchise Tax Board, the Solano County District Attorney Office, and the Solano County Narcotic Enforcement Team. All of the Department's activities have occurred in consultation and coordination with the Solano County District Attorney's office,

and all of the Department's search warrants have been reviewed by the designated Deputy District Attorney before presenting them to a Magistrate.

In summary, executions of search warrants have occurred in response to observed violations of State regulations governing medical marijuana dispensaries. To date, execution of these search warrants confirmed that the dispensaries were conducting their activities in violation of the State's regulations.

2. Did the City Council request the development of an ordinance to regulate Medical marijuana establishments?

Yes. Prior to the placement of Measure C on the ballot, the City Council directed staff to develop a regulatory structure for the City Council's consideration. In fall, 2011 staff began the process of developing a regulatory framework to allow for authorized distribution of medical marijuana in Vallejo. Staff and the consultant that had been hired to support this effort had plans to facilitate input from stakeholders, including civic and professional organizations and members of the general public, by holding public workshops commencing in October 2011. These workshops were being developed to obtain the public's input on the scope, number and location of regulated establishments and to ensure that the widest range of community concerns and opinions were obtained prior to the final development of the anticipated regulations. Upon review of public comments at the community workshops, amendments and modifications to a draft ordinance would be completed and the proposed Medical Marijuana Regulatory Ordinance was planned to go to the Planning Commission in November 2011 and the City Council thereafter.

Staff's work on this regulatory effort was suspended after a court ruling in Southern California. The ruling was *Pack v. Superior Court (City of Long Beach)*, (99 Cal. App. 4th 1070; 2011 Cal. App. LEXIS 1266), a published decision out of the State Court of Appeal, Second Appellate District enjoining the operation of a municipal ordinance which established a permit scheme, application fees and a lottery system for medical marijuana collectives. The *Pack* decision added significant uncertainty about the legality of municipal ordinances regulating the distribution of medical marijuana.

The *Pack* Court invalidated the City of Long Beach's comprehensive regulatory scheme governing medical marijuana collectives. Long Beach's ordinance established a permit process for medical marijuana establishments and set fees for processing applications. The ordinance prohibited any collective from operating within 1,000 feet of another collective and established a lottery to determine which locations could potentially operate. The ordinance expressly provided that no collective could commence or continue operations without a permit. To obtain a permit, collectives were subject to numerous operational requirements and location restrictions.

The City of Long Beach has appealed the decision to the California Supreme Court. Along with *Pack*, the California Supreme Court has agreed to review a number of other conflicting cases which alternatively held that a) cities were prohibited by State Law from banning Medical Marijuana Establishments; b) cities were not prohibited by State Law from banning Medical Marijuana Establishments; and c) a city's zoning ordinance prohibiting Medical Marijuana

Establishments could not be challenged by an individual patron of that Medical Marijuana Establishment.

The California Supreme Court is expected to issue a ruling on these cases some time during 2012-13. After reviewing the Supreme Court ruling staff will advise the City Council of the risks and opportunities regarding restarting the process to develop a regulatory program in Vallejo. **Until then, development of an ordinance to regulate Medical Marijuana establishments is on hold, and no further work is being done by staff at this time.**

3. Why are we collecting tax revenues and business license taxes from dispensaries, while at the same time we are conducting raids on dispensaries?

In November 2011 Vallejo voters passed Measure C. Measure C enacted an ordinance imposing a business license tax on marijuana businesses at a rate of up to 10% of their gross receipts plus a base tax of \$500 (adjusted yearly for changes in the Consumer Price Index) for conducting business within the City. The marijuana business license tax taxes gross receipts from the planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, and wholesale and retail sales of marijuana and ancillary products in the City, whether or not carried on for profit. Measure C did not legalize, authorize, regulate or otherwise permit medical or recreational marijuana businesses in Vallejo. However, as noted above, the City anticipated that an ordinance regulating these businesses would be developed. This ordinance is now on hold, pending resolution of the various State court cases.

The City Council adopted an ordinance establishing a tax rate for medical marijuana establishments of 10% in January 2012. The ordinance became effective on March 1, 2012. In preparation for the implementation of this ordinance, in late February 2012 the Finance Department sent dispensary operators an information packet to assist them in understanding their obligations related to operating a marijuana business within the City. This information packet provided a summary of information to assist Medical Marijuana Establishments in complying with the monthly reporting and payment requirements. It also emphasized, as does the Ordinance, that the Medical Marijuana Business License Tax is required to be paid pursuant to the taxing power of the city solely for the purpose of obtaining revenue (See, Vallejo Municipal Code Section 5.05.210) and that payment of the tax and acceptance of the tax payment by the City is not an authorization to conduct a business in the City that violates the city's zoning ordinances, any provision of the Vallejo Municipal Code or any other local, state or federal law (See, Vallejo Municipal Code Section 5.05.220).

As a result of the conflicting court cases noted above, the City is now unable to adopt an ordinance regulating these businesses. At the same time, the Police Department's monitoring of the existing dispensaries indicates that State regulations are not being adhered to by at least some of the businesses, and that additional enforcement actions are potentially appropriate to protect the adjacent neighborhoods and the public health, safety and welfare. Implementation of the tax ordinance at this point has the potential to exacerbate an already confusing situation, where the City would be issuing business licenses and collecting revenues from an activity which cannot be regulated by the City and which may continue to be the subject of additional enforcement actions by the Police Department.

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We are hopeful that the anticipated State of California Supreme Court ruling will provide a path forward for the regulation of these establishments in Vallejo. Further, we are hopeful that the Federal government will adopt a more flexible approach towards the needs of medical marijuana patients. However, given the changes in the legal landscape surrounding the regulation of Medical Marijuana Establishments – including the lawsuits, and the Federal Government’s stance – the City Council may wish to direct the City Attorney’s Office to consider options regarding the City obligation to implement the Business License Tax until the situation regarding the regulation of Medical Marijuana Establishments becomes clearer.

Please advise me if you have any questions about this matter.

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ATTACHMENT A

INFORMATION A

Date: September 27, 2011
TO: Mayor and Members of the City Council
FROM: Phil Batchelor, City Manager *AB*
SUBJECT: STATUS UPDATE REGARDING REGULATION OF MEDICAL MARIJUANA ESTABLISHMENTS AND ENFORCEMENT OF EXISTING CITY POLICIES

PURPOSE

This memorandum is intended to provide the City Council with a status report on staff's development of a comprehensive policy aimed at controlling medical marijuana establishments. The memorandum report is also designed to inform civic organizations, business owners, property owners and members of the general public on the City's existing policies and enforcement efforts on medical marijuana establishments.

This memorandum also responds to concerns expressed by the City Council and members of the public on the feasibility of enacting a moratorium on medical marijuana establishments in the City of Vallejo. Due to the fact that the City's Zoning Ordinance already prohibits medical marijuana establishments, the adoption of a temporary moratorium would not be a valuable tool to reduce the number of illegal collectives, cooperatives or dispensaries.

Controlling the proliferation of such establishments and recovering the costs for such efforts are among the components of the regulatory framework the City Council directed staff to formulate earlier this year. The development of that program continues.

UPDATE

This is an information report to the City Council regarding the status of staff efforts to:

1. Educate the public on the unpermitted status of existing medical marijuana establishments.
2. Notify property owners and landlords who lease facilities to medical marijuana establishments that they are violating the City's existing zoning ordinance.
3. Prepare a draft regulatory ordinance with tentative circulation to public and stakeholders for review and comment during public meetings, the first of which will be held in October. Staff currently intends to present the draft Zoning Ordinance to the Planning Commission in a public Hearing on November 16, 2011. Consideration of the Draft Regulatory Ordinance for consideration by the City Council is anticipated in December 2011.
4. Continue steps to facilitate more vigorous prosecution of illegal medical marijuana operations in the City of Vallejo.

Those property owners who lease facilities to such organizations do so illegally, in violation of the City's zoning ordinance and also risk prosecution. Property owners who lease their facilities to unpermitted organizations are liable to the City and face, at the City's discretion fines, penalties and the possibility of a civil assessment which could result in forfeiture of their property.

A similar approach has been used in both the City of Stockton and City of San Jose.

- 2. Notify property owners and landlords leasing facilities to medical marijuana establishments that they are violating the City's zoning ordinance and are subject to fines, penalties and other legal action.**

Staff will notify landlords and property owners who lease facilities to medical marijuana establishments of the City's current policy. Landlords and property owners will be reminded of their independent responsibility to ensure that property they maintain or control complies with the City's Municipal Code and its land use polices. Staff will warn landlords and property owners that although the City is developing regulations that may allow for the operation of a limited number of medical marijuana establishments, the number of allowed establishments and their location remains under consideration.

Even under any proposed regulatory arrangement, it is expected the majority of currently operations will be required to cease operation or relocate. At this juncture, those property owners and landlords who currently lease property to such establishments are taking a huge risk and committing an ongoing violating of the City's Zoning Ordinance which subjects them to penalties, fines, and fees including a lien being placed on property for any unpaid fines.

Recently the California State Board of Equalization (SBOE) sent field inspectors to the City of Vallejo to inspect operating dispensaries within the City to determine whether the businesses were properly licensed by the SBOE and properly reporting revenues to the State. The SBOE is just completing its field work and the City will be receiving a status report shortly.

- 3. Prepare a draft regulatory ordinance with tentative circulation to public and stakeholders for review and comment during public meetings, the first of which will be held in October. Staff currently intends to present the draft Zoning Ordinance to the Planning Commission in a public Hearing on November 16, 2011. Consideration of the Draft Regulatory Ordinance by the City Council is anticipated In December 2011.**

Public outreach and education are a critical part of any effort to regulate medical marijuana establishments. Staff will facilitate input from stakeholders, including civic and professional organizations and members of the general public by holding public workshops commencing in October. These workshops will be designed to obtain the public's input on the scope, number and location of regulated establishments and to ensure that the widest range of community concerns and opinions are obtained prior to the final development of the anticipated regulations.

Substantial work is underway by the City Manager's Office and City Attorney to develop a proposed Medical Marijuana Regulatory Ordinance as well as a cost recovery system for both reviewing applications and monitoring any approved facilities to ensure compliance.

Discussions have taken place with other cities to determine what they would do over again if they had the chance and given the unique circumstances in Vallejo what they suggest as "best practices". Utilizing the resources authorized by the Council the City Manager will be utilizing a land use and code enforcement specialist with extensive experience in making presentations and conducting public workshops. The consultant will work closely with the City Attorney and Planning staff to prepare a draft outline of the proposed ordinance for review and comment at two public meetings which will be held during the month of October. Upon review of public comments at the community workshops amendments and modifications would be completed and the proposed Medical Marijuana Regulatory Ordinance would go to the Planning Commission at its regularly scheduled meeting on November 16th. The ordinance would then be presented to the City Council for consideration. This is anticipated in December 2011.

4. Continue steps to facilitate more vigorous prosecution of illegal medical marijuana operations in the City of Vallejo.

Medical marijuana establishments and the landlords and property owners who lease space to them are violating the City's Municipal Code by using the property in a manner that is not authorized under the City's Zoning Ordinance. The Vallejo Municipal Code declares that all such violations are public nuisances and authorizes the City Attorney or its designated legal representative to file appropriate legal proceedings to abate them.

These civil enforcement efforts, however, are both resource intensive and can be costly. Among the largest components of these costs are litigation expenses in the form of attorneys' fees... Of course the costs of any legal action are dependent on a number of factors including the resources and zealotness of the opposition. The City Attorney's Office recently conducted an informal survey of outside counsel and in-house city attorneys in an effort to approximate the attorneys' fees incurred prosecuting such an action. Attorneys' fees have ranged from \$15,000 - \$30,000 where an opposition was minimal to nonexistent to as high as \$140,000.00 where opposition was vigorous and included multiple appeals.

In addition to the legal costs there are enforcement costs incurred by the Police Department for investigation, preparation and serving search warrants, processing and booking evidence, working with the District Attorney and preparing for Court. These actions could cost up to \$10,000 or more per dispensary. The Police Department, in coordination with the District Attorney's Office, have instituted enforcement efforts to ensure marijuana dispensaries are operating in conformance with criminal aspects of the Compassionate Use Act and enforcement guidelines promulgated by the California Attorney General.

The City currently has no mechanism for recouping these costs. That, of course, will change if the Council accepts Staff's recommendation and adopts an amendment to City's general penalty ordinance which would allow for the recovery of attorneys' fees following the successful prosecution of a nuisance abatement action. Staff's proposed amendment to that ordinance is on the agenda this evening (September 27, 2011) for first reading. The ability to recoup these kinds of costs and fees will not only enhance the City's ability to prosecute violations of its municipal code but Staff believes it will also carry with it a significant deterrent effect.

FISCAL IMPACT

Staff is performing these actions within current approved budget appropriations.

CONTACT

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ATTACHMENT B

ACTION D

Date: January 17, 2012

TO: Mayor and Members of the City Council

FROM: Phil Batchelor, City Manager *PB*
Frederick G. Soley, City Attorney *F.G.S.*
Deborah Lauchner, Finance Director *Lauchner*

SUBJECT: First Reading of Ordinance Amending Section 5.05.250 of the Vallejo Municipal Code to set the rate of taxation for Marijuana Businesses and Status Update on Regulatory and Enforcement Efforts Related to Medical Marijuana Establishments.

RECOMMENDATION

Staff recommends that the City Council:

1. Hold on First Reading of an ordinance amending Section 5.05.250 of the Vallejo Municipal Code to set the rate of taxation for Marijuana Businesses at ten percent (10%) of gross receipts.
2. Set January 31, 2012 as the date to hold on second reading of the ordinance.
3. Defer further consideration of a regulatory ordinance on medical marijuana businesses until the State Supreme Court rules on the appeal of the City of Long Beach to the *Pack* decision of the State Appellate Court.
4. Acknowledge that notices have been sent by the City Manager to all property owners who currently facilitate, encourage, allow or permit medical marijuana establishments to operate that they are violating the City's zoning ordinance.
5. Recognize steps being taken by the Vallejo Police Department to assist and coordinate efforts by federal state and regional law enforcement to address illegal marijuana operations in Vallejo.

REASONS FOR RECOMMENDATION

This item implements the will of the voters in passing Measure C, entitled "Vallejo Marijuana Business License Tax Measure" on November 8, 2011. If the recommendation is adopted, a second reading of the ordinance could take place on January 31, 2012, allowing the Marijuana Business Tax to take effective no earlier than

March 1, 2012.

With the ordinance adopted under this timeline, effective March 1, 2012, any person engaged in marijuana business in the City shall pay 10% of the businesses gross receipts to the City monthly along with an annual base tax of \$500 (adjusted yearly for changes in the Consumer Price Index). For billing purposes, the tax will begin on March 1st. Tax remittances will be due to the City on a monthly basis thereafter similar to the existing Transient Occupancy Tax collection procedures.

Additionally this report provides a brief summary of the current status of the City's plans to adopt a regulatory ordinance and efforts being taken to facilitate a more rigorous prosecution of illegal marijuana operations in Vallejo.

BACKGROUND

A. Measure C - Vallejo Marijuana Business License Tax

On July 12, 2011 the City Council adopted resolutions calling and ordering an election to submit to the voters an ordinance adding chapter 5.05 to the Vallejo Municipal code imposing a Marijuana Business License Tax Rate and amending chapter 5.04 of the code subject to approval of the voters on the November ballot. On November 8, 2011, the voters overwhelmingly approved Measure C with 13,982 "yes" versus 4,293 "no" votes, a margin of 76.5% in favor to 23.5% opposed.

Notwithstanding the passage of the ballot measure it is important to note that Measure C does not legalize or otherwise permit marijuana business in Vallejo.

The base tax of \$500 took effect upon the approval of the voters but the tax on gross receipts will not take effect until the City Council, by ordinance, sets the rate of the tax, which cannot exceed 10%. The City Council may, at any time, set a lower rate on the gross receipts for all marijuana businesses or establish differing tax rates for different categories of marijuana business, subject to the maximum rate of 10%. The City Council may also increase the tax rate on gross receipts from time to time, provided the tax rate set does not exceed 10%.

The tax revenues from Measure C will be subject to an annual audit performed by the City's independent auditor which is reported in the City's Comprehensive Annual Financial Report.

The marijuana business tax will tax gross receipts from the planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, and wholesale and retail sales of marijuana and ancillary products in the City, whether or not carried on for profit.

Staff is recommending that the rate be established at 10%. Other California cities have established tax rates a various levels. For example Oakland (5%), San Jose (7%), Richmond (10%), and Long Beach (15%).

The second reading of this ordinance will be presented on January 31st and the ordinance will be effective 30 days later.

B. Status Update on Regulatory Ordinance for Medical Marijuana Establishments.

Staff's development of a regulatory ordinance for Medical Marijuana Establishments remains on hold pending resolution of an appeal to the California Supreme Court by the City of Long Beach in the case of *Pack v. Superior Court (City of Long Beach)*, (99 Cal. App. 4th 1070; 2011 Cal. App. LEXIS 1266. The *Pack* decision enjoined the operation of a municipal ordinance which established a permit scheme, application fees and a lottery system for medical marijuana collectives.

In light of the ruling, cities throughout the state have placed their permitting schemes on hold. Napa, for example has deferred implementing its regulatory ordinance pending final resolution of the *Pack* case. The City Attorney for the City of Los Angeles has said the decision would prevent LA from following its plan to use a lottery to choose 100 dispensaries.

Since the *Pack* decision precludes the very type of permit/cost recovery approach the City of Vallejo was contemplating, the plans for community outreach and public meetings with stakeholders and the scheduled meetings with the Planning Commission and Council have been placed on a temporary hold until the legal issues are fully resolved. A decision could come relatively quickly or it could take several more months depending what the California Supreme Court decides to do.

The State's high court has given itself until February 8, 2012 to decide whether to accept review of the *Pack* decision. If it declines to accept review, the Court of Appeal's decision would become final and the City would have very few options available. If the high court does accept review, a final ruling could take several additional months.

The *Pack* decision invalidated the City of Long Beach's comprehensive regulatory scheme governing medical marijuana collectives. Long Beach's ordinance established a permit process for medical marijuana establishments and set fees for processing applications. The ordinance prohibited any collective from operating within 1,000 feet of another collective and established a lottery to determine which locations could potentially operate. The ordinance expressly provided that no collective could commence or continue operations without a permit. To obtain a permit, collectives were subject to numerous operational requirements and location restrictions

C. The United States Department of Justice's Recent Pronouncements and Local, State and Federal Law Enforcement Efforts

Within the last several months, the United States Department of Justice (DOJ) has issued several advisory letters regarding Medical Marijuana and more specifically collectives operating so-called "store-front dispensaries". The proliferation of these kinds of establishments recently culminated in a joint announcement by the four United States Attorneys for California's Federal Judicial Districts. In October 2011 the four United States Attorneys announced that operators of dispensaries and property owners that rent, lease or otherwise allow medical marijuana dispensaries to operate are violating federal law. Persons and entities who operate or facilitate the operation of such dispensaries, said the United States Attorneys will be subjected to criminal

prosecution and civil enforcement actions which could lead to forfeiture of their real property and seizure of their bank accounts.

The United States Attorneys advised that in mid-October, they sent warning letters to several property owners in Vallejo giving them approximately 45 days to cease operation or federal forfeiture proceedings would be initiated. The 45 day period expired on November 21, 2011. The Vallejo Police Department has been working closely with DOJ regarding these enforcement efforts. While no action has yet taken place in Vallejo federal authorities have raided dispensaries in other cities.

D. Code Enforcement Efforts

Staff has identified 25 properties as of December 20, 2011 known or suspected of operating dispensaries within Vallejo. Beginning in September 2011 the Code Enforcement Division has prepared, and the City Manager has signed, letters notifying each property owner that they are in violation of the City of Vallejo Zoning Ordinance.

In the meantime it appears that most dispensaries in Vallejo continue to operate notwithstanding the letter and the chilling effect the DOJ letters have had on property owners.

Conclusion

The proliferation of medical marijuana dispensaries during 2011 in California communities around the state continues to be fraught with legal conflicts between Federal, State and local laws; moral disputes between supporters and opponents of Proposition 215 and the California Public Use Act; and confusion among municipalities whether to use its powers to regulate, tax or prohibit marijuana establishments.

The *Pack* decision and the pronouncements of the Office of the United States Attorney add further uncertainty and ambiguity in this ever changing field. At this juncture, however, the best course is one that is both deliberate and cautious. Long Beach is appealing the *Pack* decision and it may not stand. For now, however, *Pack* appears to preclude the very type of permit/cost recovery approach that the City was contemplating.

A number of events are expected to transpire within the next 30 to 60 days and staff believes that it would be best to defer action on regulating medical marijuana establishments until events unfold. If *Pack* is upheld by the California Supreme Court, the City's options will be dramatically different than if it is overturned. If the DOJ actively prosecutes and seizes assets of dispensaries it is likely the number of establishments will decrease. Until some finality is achieved however the City has very little room to move.

FISCAL IMPACT

The two sources of revenue permitted under Measure C are the annual Base Tax and the monthly Marijuana Business License Tax (MBLT) on gross receipts.

The Base Tax is relatively easy to estimate and is due immediately.
25 dispensaries x \$500/year=\$12,500 annually

The MBLT (due monthly on gross receipts) is more difficult to predict having no experience with this tax. Using information provided by the State Board of Equalization a new medical cannabis club may have approximately \$1,000 per day in gross receipts and can even grow to \$2,000-\$4,000 per day.

In Vallejo several variables may affect these estimates for 2012. First, it must be recognized that differing levels of business activity exist among the dispensaries. Second, there remains a possibility that one or more may be shut down due to law enforcement efforts. Finally only 10 months of tax receipts will be realized, rather than 12 months, in 2012.

If the MBLT is imposed at the 10% rate, and in light of these variables above, the City should realize new revenue between \$360,000 and \$540,000 in 2012.

CONTACTS

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ATTACHMENTS

Attachment - Ordinance amending Section 5.05.250 of the Vallejo Municipal Code to set the rate of taxation for marijuana businesses

ORDINANCE NO. 1661 N.C. (2d)

**AN ORDINANCE OF THE CITY OF VALLEJO AMENDING
SECTION 5.05.250 THE VALLEJO MUNICIPAL CODE
TO SET THE RATE OF TAXATION
FOR MARIJUANA BUSINESSES**

THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.05.250 of the Vallejo Municipal Code is amended to read as follows:

"5.05.250 Amount of business tax owed.

A. In addition to the business tax imposed under Chapter 5.04 of this code and the requirements set forth therein, every person engaged in marijuana business in the city shall pay a business tax at a rate of up to ten percent (10%) of gross receipts. The tax under this chapter shall not be imposed on marijuana businesses unless and until the city council, by ordinance, takes action to set a tax rate not to exceed ten percent (10%) of gross receipts.

B. Notwithstanding the maximum tax rate of ten percent (10%) of gross receipts imposed under Subsection A, the city council may, in its discretion, at any time by ordinance, implement a lower tax rate for all marijuana businesses or establish differing tax rates for different categories of marijuana businesses, as defined in such ordinance, subject to the maximum rate of ten percent (10%) of gross receipts. The city council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent (10%) of gross receipts in accordance with subsection A above.

C. Pursuant to subsection A above, the city council adopted Ordinance No.1661 setting the marijuana business tax rate at the rate of ten percent (10%) of gross receipts, commencing on March 1, 2012, every person engaged in marijuana business in the city shall pay a marijuana business tax at the rate of ten percent (10%) of gross receipts."

Section 2. **SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3. **EFFECTIVE DATE.** The provisions of this Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final adoption.