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OAKLAND

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# CITY OF OAKLAND



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June 5, 2012

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Honorable City Council  
Oakland, California

City Council President Larry Reid and Members of the City Council:

**Subject: Report and Resolution Authorizing the City of Oakland to Join an Amicus (Friend of the Court) Brief in the *Pack v. Long Beach* appeal to the California Supreme Court to Maintain Local Jurisdictions' Ability to Regulate Medical Cannabis Dispensaries.**

## Summary of Action Requested

The California State Association of Counties along with the San Francisco City Attorney's Office and the Oakland City Attorney's Office have discussed filing an amicus (friend of the court) brief in the *Pack v. Long Beach* case regarding a City and County's ability to regulate medical cannabis dispensaries.

The case is *Pack v. Long Beach*, Second District Court of Appeal, B228781. In *Pack*, disgruntled applicants in Long Beach who were ordered to shut down store front medical cannabis dispensaries sued the city asserting that the Long Beach ordinance was illegal and preempted by federal law. The appellate court ruled the Long Beach ordinance invalid based on federal preemption grounds. City of Long Beach appealed the decision to the California Supreme Court.

The Supreme Court's decision could affect a local jurisdiction's authority to regulate medical cannabis dispensaries. Therefore, City Attorney's Office requests that the Council authorize the City Attorney to join the California State Association of Counties along and the City and County of San Francisco in the filing of an amicus brief appeal regarding the importance of retaining such regulatory authority in support of the Long Beach.

## Background

Last October, the Second Appellate District Court of Appeal ruled for the plaintiffs holding that while the city could regulate dispensary compliance to a limited

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extent with local health and safety codes, such as hours, prohibiting consumption of alcohol on the premises, etc., provisions of the Long Beach ordinance regulating dispensary distribution operations were preempted by federal law(s) that make the possession and sale/distribution of cannabis illegal. The appellate court viewed the dispensary permitting scheme as sanctioning or "authorizing" such illegal activity to the extent the city issued permits and regulated business operations by conducting financial and facilities audits, among other oversight activities.

Long Beach has appealed the decision to the California Supreme Court for clarification on its ability to regulate medical cannabis dispensaries and to control the proliferation of such dispensaries. The purpose of this report is to seek the Council's authorization for the City Attorney to join this amicus brief on behalf of the City of Oakland, which will stress the importance of maintaining a city's ability to regulate and control proliferation of medical cannabis dispensaries.

#### Recommendation

We recommend that the City Council authorize the City Attorney to join the amicus brief in the California Supreme Court asking the Court to reverse the appellate court's ruling and thereby uphold local jurisdictions' ability to regulate medical cannabis dispensaries.

Respectfully submitted,

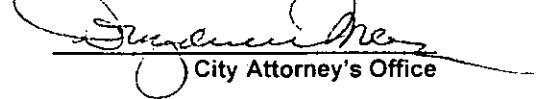
  
BARBARA J. PARKER  
City Attorney

Attorney Assigned:  
Kiran Jain

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Approved as to Form and Legality

  
City Attorney's Office

## Oakland City Council

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN AN AMICUS (FRIEND OF THE COURT) BRIEF IN THE *PACK V. CITY OF LONG BEACH* (B228781) APPEAL TO THE CALIFORNIA SUPREME COURT TO MAINTAIN A CITY'S ABILITY TO REGULATE MEDICAL CANNABIS DISPENSARIES**

**WHEREAS**, City of Oakland was the first city in the nation to adopt an ordinance permitting medical cannabis dispensaries in 2004 and has successfully regulated medical cannabis dispensaries based on health, safety and public welfare concerns for several years; and

**WHEREAS**, such ordinance has assisted in providing patients and their caregivers with access to safe and affordable medical cannabis medicine, diminished medical cannabis related crime, and spurred economic growth in Oakland; and

**WHEREAS**, City of Long Beach, in 2010, passed an ordinance regulating and permitting medical cannabis collectives, which was challenged by Plaintiffs Ryan Pack and Anthony Gayle; and

**WHEREAS**, the Court of Appeal in the Second Appellate District (B228781) declared that the City of Long Beach medical cannabis regulatory ordinance was preempted by the federal Controlled Substances Act, which makes the possession and sale of any marijuana illegal, and thereby invalid; and

**WHEREAS**, the City of Long Beach is appealing this ruling to the California Supreme Court; and

**WHEREAS**, the California Supreme Court's affirmation of this ruling could affect local jurisdiction's authority to regulate medical cannabis dispensaries in California, such as Oakland; and

**WHEREAS**, Oakland has a substantial interest in the outcome of this litigation for the reasons mentioned above; so be it

**RESOLVED:** That the City Council authorizes the City Attorney on behalf of the City of Oakland to join in and sign onto an amicus brief asking the California Supreme Court to overturn the decision of the Court of Appeal in the Second Appellate District striking down Long Beach's medical cannabis regulatory ordinance.

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IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF AND PRESIDENT REID

AYES-

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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LATONDA SIMMONS

City Clerk and Clerk of the Council of  
the City of Oakland, California