

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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SAN DIEGO, CA 92108-4402  
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# Th 21e

## Addendum

March 5, 2013

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item 21e**, Coastal Commission LCP Amendment  
**IMB-MAJ-3-12 (Medical Marijuana Distribution Facilities)**, for the  
Commission Meeting of March 7, 2013.

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Staff recommends the following changes be made to the above-referenced staff report:

On Page 1, the following correction shall be made above the **Summary of Amendment Request**:

The subject LCP Implementation Plan amendment was submitted and filed as complete on November 9, 2012. A one-year extension request was granted by the Commission on December 12, 2012. At that time, the City requested that that the item be set for the San Diego Commission hearing. Therefore, the date by which the Commission must take action is January 8, 2013 2014.

On Page 1, the following correction shall be made to the **Summary of Amendment Request**:

The proposed amendment would add a new chapter to the City's Zoning Code/Implementation Plan prohibiting medical marijuana distribution facilities in all zoning districts. This defined use does not currently legally exist in the city. The chapter also includes a Violations section, noting that any such uses are a public nuisance and not subject to criminal enforcement remedies, and a Severability section, which allows that if some portion of the Chapter is deemed unenforceable by a court, the Chapter as a whole will not be deemed unenforceable.

**CALIFORNIA COASTAL COMMISSION**

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February 15, 2013

# Th21e

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
DIANA LILLY, COASTAL PROGRAM ANALYST, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF IMPERIAL BEACH LCP  
AMENDMENT IMB-MAJ-3-12 (MEDICAL MARIJUANA DISTRIBUTION  
FACILITIES) for Commission Meeting of March 6 - 8 , 2013**

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The subject LCP Implementation Plan amendment was submitted and filed as complete on November 9, 2012. Therefore, the date by which the Commission must take action is January 8, 2013.

## **SUMMARY OF AMENDMENT REQUEST**

The proposed amendment would add a new chapter to the City's Zoning Code/Implementation Plan prohibiting medical marijuana distribution facilities in all zoning districts. This defined use does not currently legally exist in the city. The chapter also includes a Violations section, noting that any such uses are a public nuisance and subject to criminal enforcement remedies, and a Severability section, which allows that if some portion of the Chapter is deemed unenforceable by a court, the Chapter as a whole will not be deemed unenforceable.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission approve the proposed IP amendment prohibiting medical marijuana distribution facilities. The proposed prohibition of medical marijuana dispensaries does not raise any issues relative to consistency with the certified land use plan. This request for certification has been brought to the Commission because the City determined that this land use prohibition must be contained in the City's Zoning Code, and the Zoning Code is a part of their Local Coastal Program. Any changes to the City's Zoning Code requires an LCP amendment.

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Plan (IP) inadequate to carry out the LUP. The proposed change to the IP, as amended, continues to conform with, and be adequate to carry out the relevant provisions of the City's certified Land Use Plan. No coastal resource impacts will result

and the amendment does not raise any public access issues. Therefore, staff is recommending that the Commission approve LCPA IMB-MAJ-3-13 as submitted.

The appropriate resolutions and motions begin on Page 3. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 4.

### **ADDITIONAL INFORMATION**

Further information on the Imperial Beach LCP Amendment IMB-MAJ-3-13 may be obtained from Diana Lilly, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

On June 30, 1981, the City of Imperial Beach formally submitted its Land Use Plan (LUP) for Commission approval. The plan, as originally submitted, comprised the City's entire General Plan (10 elements and a policy plan). Since the plan contained a large volume of material that was not coastal-related and policies addressing coastal issues were found throughout many of the elements, staff summarized the coastal policies into one document. This policy summary along with the Land Use Element was submitted to the Commission as the LCP Land Use Plan.

On September 15, 1981, the Commission found substantial issue with the LUP, as submitted, denied and then conditionally approved the LUP with recommended policy changes for all policy groups. The City resubmitted the LCP Land Use Plan in early 1982, incorporating most of the Commission's suggested policy modifications. This included modification language related to the preservation and protection of Oneonta Slough/Tijuana River Estuary and South San Diego Bay, preservation and enhancement of coastal access and the provision for visitor-serving commercial uses in the Seacoast District. On March 16, 1982, the Commission certified the City of Imperial Beach LCP Land Use Plan as submitted. The Commission on November 18, 1982 effectively certified the land use plan. In 1983, prior to certification of the Implementation Plan, the Commission approved an amendment to the LUP to correct a mapping error.

On August 15, 1983, the City began issuing coastal development permits pursuant to Section 30600.5 (Hannigan provisions) of the Coastal Act based on project compliance with its certified LUP. The City then submitted its entire Zoning Ordinance in order to implement the provisions of the certified Land Use Plan. The zoning ordinance was completely rewritten in order to implement the LUP. On September 26, 1984, the Commission approved the LCP/Implementation Plan as submitted. As of February 13, 1985, the City has been issuing coastal development permits under a certified local coastal program. Subsequent to the Commission's actions on the land use plan and implementation plan, there have been approximately thirty amendments to the certified local coastal program.

**B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

**C. PUBLIC PARTICIPATION**

The City has held City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL – RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

**MOTION:**      *I move that the Commission reject the Implementation Program Amendment for the City of Imperial Beach as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment for the City of Imperial Beach as submitted and adopts the findings set forth below on grounds that the Implementation Program conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF IMPERIAL BEACH  
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION.**

The proposed LCP amendment would amend the certified Imperial Beach LCP implementation plan by adding a new chapter 19.61 (Medical Marijuana Distribution Facilities) to the City's Zoning Code. The new chapter defines a "Medical marijuana distribution facility" through a reference to the previously amended business licensing and regulation chapter of the Imperial Beach municipal code (which is not part of the Zoning Code or the LCP), which is as follows:

A. "Medical marijuana distribution facility" is: (1) any facility or location, whether fixed or mobile, where marijuana is made available, sold, transmitted, given or otherwise provided to four or more persons with identification cards or qualified patients, or primary caregivers, as defined in California Health and Safety Code Section 11362.5 et seq., as amended from time to time; or (2) any facility where four or more qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code Section 11362.5 et seq.

B. "Medical marijuana distribution facility" shall not include any of the following facilities licensed and properly operating pursuant to the provisions of Division 2 of the California Health and Safety Code as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 et seq., as amended from time to time:

1. A clinic;
2. A health facility;
3. A residential care facility for persons with chronic, life-threatening illnesses;
4. A licensed residential care facility for the elderly; or
5. A residential hospice or a home health agency.

The proposed new chapter prohibits medical marijuana distribution facilities as defined above in all zoning districts. The proposed chapter also includes a Violations section that declares any use or condition caused or permitted to exist in violation of the Chapter to be a public nuisance that may be abated by the City, and a Severability section, which allows that if some portion of the Chapter is deemed unenforceable by a court, the Chapter as a whole will not be deemed unenforceable.

**B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN**

The City's stated rationale for the prohibition of medical marijuana dispensaries is that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities have experienced serious adverse impacts resulting from such uses, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The City Council anticipates that the City of Imperial Beach will experience similar adverse impacts and effects.

Under the Federal Controlled Substances Act, the manufacture, distribution, or possession of marijuana is a criminal offense. Under California State law, including the Compassionate Use Act of 1996 and the Medical Marijuana Program (MMP) Act of 2003, seriously ill Californians are granted access to marijuana for medical purposes. However, the City asserts that the experience of other cities has been that many medical marijuana distribution facilities do not operate as true cooperatives or collectives in compliance with the MMP. Thus, these businesses may be engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City could be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking.

In its review, the City cited the following LUP Policy:

Goal 11 "Small Beach Oriented Town" states: [...]

e. Economic Development

The City shall foster development of a broader tax base to support residents of, and visitors to the City. However, this development must be compatible with the goal of remaining a small, beach-oriented town. Economic activities should focus on generating income through expanded local services, visitor serving uses and ecotourism and research related to the City's natural resources.

The standard of review established in the Coastal Act for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. As noted above, Coastal Act Section 30513 states in relevant part:

The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan.

Given the limited nature of the Commission's review, the merits of the proposed change is not before the Commission for its consideration. Similarly, the question before the Commission is not whether the proposed change is required by, or even within the scope of issues addressed by the Coastal Act. The only question is whether the change would render the existing IP out of conformity with the LUP or inadequate to carry it out.

The proposed amendment will not conflict with the policies certified as part of the City of Imperial Beach LUP. There is no policy in the LUP that mandates the availability of dispensaries for medical marijuana, either directly or indirectly. The proposed amendment does not conflict with the above cited LUP policy, or any of the LUP policies intended to protect community character. Thus, the proposed amendment will not conflict with the certified LUP, the standard of review in this case.

Further, the addition of a prohibition of medical marijuana dispensaries does not in any way reduce the adequacy of the IP to carry out the provisions of the LUP. Therefore, the Commission finds that the proposed amendment, as submitted, does not raise any issues justifying its rejection pursuant to Coastal Act Section 30513.

#### **PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform to CEQA provisions. In the case of the subject LCP amendment, the Commission finds that approval of the subject LCP amendment as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act.

As described above, the LCP, as amended, will be consistent with and adequate to carry out the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of CEQA. There are no feasible alternatives under the meaning of CEQA which would reduce the potential for significant adverse environmental impacts. Therefore, the Commission finds that no significant unmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment as submitted.

Proposed Amendment to Title 19 (Zoning) of the Imperial Beach Municipal Code in ~~strikeout~~/underline format to read as follows:

## **CHAPTER 19.61 MEDICAL MARIJUANA DISTRIBUTION FACILITIES**

### **19.61.010 Definitions.**

"Medical marijuana distribution facility" has the same meaning as in Section 4.60.010 of this Code.

### **19.61.020 Medical marijuana distribution facilities.**

A. Medical marijuana distribution facilities are prohibited uses in all zoning districts in the City of Imperial Beach, and no person shall operate or locate a medical marijuana distribution facility in the City of Imperial Beach. The City shall not issue, approve, or grant any permit, license, or other entitlement for the establishment or operation of a medical marijuana distribution facility in the City of Imperial Beach.

B. This Chapter does not apply where preempted by state or federal law.

### **19.61.030 Violations--penalty.**

A. Any use or condition caused or permitted to exist in violation of any provisions of this Chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in this Code.

B. Each violation of this Chapter and each day a violation of this Chapter continues to exist shall be considered a separate and distinct violation.

C. Notwithstanding any other provision in this Code, any person found to be in violation of this Chapter shall not be subject to criminal enforcement remedies as noted in this Code. All other means of enforcement authorized under this Code may be used to address violations of this Chapter, including but not limited to: civil penalties, nuisance abatement, civil actions, and administrative citations.



## **RESOLUTION NO. 2011-7061**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING, FOR THE PURPOSE OF SUBMITTING TO THE CALIFORNIA COASTAL COMMISSION, ORDINANCE NO. 2011-1119 TO ADD CHAPTER 19.61 TO THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, RELATING TO MEDICAL MARIJUANA DISTRIBUTION FACILITIES**

**WHEREAS**, the City circulated Ordinance No. 2011-1119 for public review for a period of 45 days pursuant to Title 14 of the California Code of Regulations section 13515 (14 CCR 13515) and California Government Code section 65352; and

**WHEREAS**, the City Council of the City of Imperial Beach, conducted a duly noticed public hearing pursuant to applicable law, on June 15, 2011 to consider Ordinance No. 2011-1119, a proposed amendment to the City of Imperial Beach Local Coastal Program (LCP) Implementation Plan and receive public comments; and

**WHEREAS**, the City Council adopted Ordinance No. 2011-1119 at the regular meeting of July 6, 2011, which will become effective either thirty days after City Council approval or immediately upon approval by the California Coastal Commission, whichever occurs later; and

**WHEREAS**, the subject amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines 15061 (b)(3) in that it can be seen with certainty that the ordinance does not have the potential for causing a significant effect on the environment; and

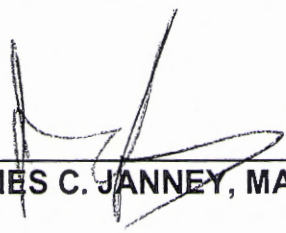
**WHEREAS**, the City Council certifies that the subject amendment has been properly approved and is consistent with the California Coastal Act of 1976, as amended, and the City of Imperial Beach Local Coastal Program.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Imperial Beach as follows:

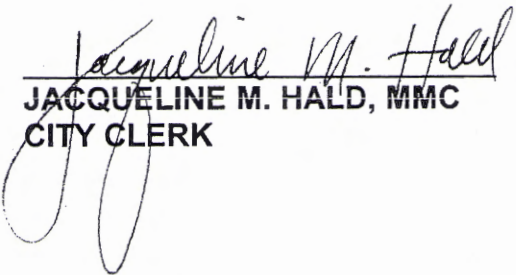
1. The above-listed findings are true and correct.
2. Pursuant to Public Resources Code section 30510(a) and Title 14 of the California Code of Regulations section 13551, the City Council hereby certifies that Ordinance No. 2011-1119 which amends Title 19 of the Imperial Beach Municipal Code, will be carried out in a manner fully in conformity with the California Coastal Act of 1976, as amended, and the City of Imperial Beach Local Coastal Program.
3. The City Manager, or his designee, shall submit this Resolution along with Ordinance No. 2011-1119 for filing and approval by the California Coastal Commission, and shall take all steps necessary to obtain approval of Ordinance No. 2011-1119 by the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 6th day of July 2011, by the following vote:

**AYES: COUNCILMEMBERS: KING, BRAGG, SPRIGGS, JANNEY**  
**NOES: COUNCILMEMBERS: BILBRAY**  
**ABSENT: COUNCILMEMBERS: NONE**

  
\_\_\_\_\_  
**JAMES C. JANNEY, MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**CITY CLERK**



ORDINANCE NO. 2011-1119

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ADDING CHAPTER 19.61 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE AND REPEALING ORDINANCE 2010-1107.

**WHEREAS**, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety ("H&S") Code Section 11362.5 *et seq.*); and

**WHEREAS**, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

**WHEREAS**, on January 1, 2004, the "Medical Marijuana Program" ("MMP"), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature purporting to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP; and

**WHEREAS**, the CUA expressly anticipates the enactment of additional local legislation, providing that "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code section 11362.5); and

**WHEREAS**, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported, and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The City Council reasonably anticipates that the City of Imperial Beach will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and

**WHEREAS**, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that at least 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165>; and



**WHEREAS**, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)). The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

**WHEREAS**, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMP and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMP; and

**WHEREAS**, the City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the CUA and the MMP also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal. App. 4th 1383, 1386-1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

**WHEREAS**, the City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain illegal under the federal Controlled Substances Act ("CSA") (*Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588); that the federal courts have recognized that despite California's CUA and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1); and

**WHEREAS**, the City Council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

**WHEREAS**, the tension between state and federal laws governing marijuana has created confusion about what authority cities have regarding the regulation of medical marijuana; and

**WHEREAS**, the City Council has discussed the adverse effects associated with medical marijuana dispensaries as shown in the December 15, 2010 City Council discussion, staff report and attachments related to proposed medical marijuana dispensary regulations which are incorporated by reference and relied upon in approving this Ordinance; and



**WHEREAS**, the City Council has been concerned about the adverse effects associated with medical marijuana dispensaries and has discussed such effects adopting a moratorium on August 19, 2009 (Ord. No. 2009-1090) and extending it twice pursuant to applicable law (Ord. No. 2009-1091 and Ord. No. 2010-1107) and such ordinances are incorporated by reference and relied upon in approving this Ordinance; and

**WHEREAS**, the City of Imperial Beach, with a population of under 30,000, is one of the smallest cities in San Diego County; and

**WHEREAS**, the City of Imperial Beach is only about four (4) square miles in size, with two (2) square miles occupied by a marine estuary; and

**WHEREAS**, the City of Imperial Beach lacks industrial zones or any other location in the City that is subject to development which is separated adequately from residential neighborhoods, schools, and other similar sensitive land uses inconsistent with medical marijuana distribution facilities; and

**WHEREAS**, there are several medical marijuana distribution facilities in portions of the City of San Diego near the border with the City of Imperial Beach and the County of San Diego has regulations which allow medical marijuana distribution facilities to which citizens of Imperial Beach can go to obtain medical marijuana if necessary; and

**WHEREAS**, pursuant to Government Code section 65300 *et seq.*, the City of Imperial Beach has adopted a General Plan which, among other things, supports economic development within the City of Imperial Beach; and

**WHEREAS**, medical marijuana dispensaries of the variety seen in some of the other cities discussed above are contrary to the goals established in the City's General Plan and Local Coastal Program such as Goal 11 "Small Beach Oriented Town" including more specifically:

**Economic Development**

The City shall foster development of a broader tax base to support residents of, and visitors to the City. However, this development must be compatible with the goal of remaining a small, beach-oriented town. Economic activities should focus on generating income through expanded local services, visitor serving uses and ecotourism and research related to the City's natural resources; and

**WHEREAS**, an ordinance prohibiting medical marijuana distribution facilities and prohibiting the issuance of any land use permits or entitlements for medical marijuana distribution facilities is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Imperial Beach; and

**WHEREAS**, an ordinance prohibiting medical marijuana distribution facilities and prohibiting the issuance of any land use permits or entitlements for medical marijuana distribution facilities conform with and is adequate to carry out the certified land use plan; and

**WHEREAS**, the City Council certifies, pursuant to Coastal Commission Regulation 13551 and Public Resources Code section 30510 that the proposed zoning ordinance amendment establishing a prohibition on medical marijuana distribution facilities conforms with the provisions of the California Coastal Act of 1976 (Public Resources Code Sections 30000 *et seq.*); and

**WHEREAS**, the City Council is mindful of the needs of medical marijuana patients and has crafted this Ordinance in a manner that does not interfere with a patient's ability to produce his or her own medical marijuana or to obtain medical marijuana from a primary caregiver as allowed under applicable State law; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

**WHEREAS**, on December 15, 2010, the City Council directed staff to prepare this zoning ordinance and circulate it as necessary to allow for Council consideration prior to expiration of Ordinance No. 2010-1107; and

**WHEREAS**, the City circulated this Ordinance for public review for a period of 45 days pursuant to Title 14 of the California Code of Regulations section 13515 (14 CCR 13515) and California Government Code section 65352 and held a duly noticed public hearing on this Ordinance on June 15, 2011; and

**WHEREAS**, the City Council finds, pursuant to Government Code Section 65860, the proposed Zoning Ordinance Amendment, Ordinance No. 2011-1119, to be consistent with the General Plan/Local Coastal Program; and

**WHEREAS**, this is the first submittal of an amendment to the zoning ordinance in this calendar year.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN** as follows:

**Section 1.** The above-listed findings are true and correct.

**Section 2.** Title 19 (Zoning) of the Imperial Beach Municipal Code is amended by adding a new Chapter 19.61 (Medical Marijuana Distribution Facilities) to read as follows:

**"CHAPTER 19.61**

**19.61.010 Definitions.**

**19.61.020 Medical Marijuana Distribution Facilities.**

**19.61.030 Violations--penalty.**

**19.61.010 Definitions.**

"Medical marijuana distribution facility" has the same meaning as in Section 4.60.010 of this Code.

**19.61.020 Medical marijuana distribution facilities.**

A. Medical marijuana distribution facilities are prohibited uses in all zoning districts in the City of Imperial Beach, and no person shall operate or locate a medical marijuana



distribution facility in the City of Imperial Beach. The City shall not issue, approve, or grant any permit, license, or other entitlement for the establishment or operation of a medical marijuana distribution facility in the City of Imperial Beach.

B. This Chapter does not apply where preempted by state or federal law.

**19.61.030 Violations--penalty.**

A. Any use or condition caused or permitted to exist in violation of any provisions of this Chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in this Code.

B. Each violation of this Chapter and each day a violation of this Chapter continues to exist shall be considered a separate and distinct violation.

C. Notwithstanding any other provision in this Code, any person found to be in violation of this Chapter shall not be subject to criminal enforcement remedies as noted in this Code. All other means of enforcement authorized under this Code may be used to address violations of this Chapter, including but not limited to: civil penalties, nuisance abatement, civil actions, and administrative citations."

**Section 3. Severability.** If any section, subsection, phrase or clause of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**Section 4.** Upon the effective date of this Ordinance (as described in Section 5 below), Ordinance No. 2010-1107 shall be repealed.

**Section 5.** This Ordinance shall take effect upon certification by the California Coastal Commission, but not sooner than thirty (30) days following its passage and adoption by the City Council.

**Section 6.** The City Council hereby finds, based on all the evidence in the record, that the proposed zoning code text amendments are consistent with the general plan goals, policies, and programs and the amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

**Section 7. Appeal Process under the California Code of Civil Procedure (CCP):** The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**Section 8.** The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

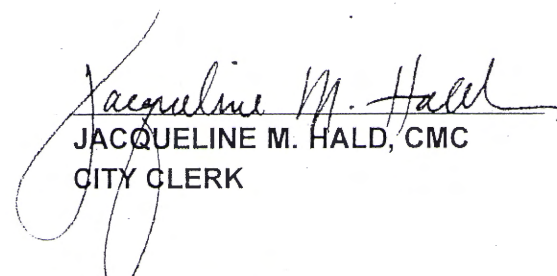
**INTRODUCED AND FIRST READ** during a public hearing at a regular meeting of the City Council of the City of Imperial Beach, California, on the 15th day of June, 2011; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 6th day of July, 2011, by the following vote:

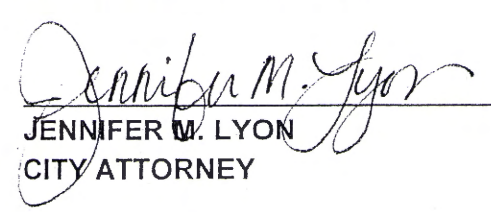
AYES: COUNCILMEMBERS: KING, BRAGG, SPRIGGS, JANNEY  
NOES: COUNCILMEMBERS: BILBRAY  
ABSENT: COUNCILMEMBERS: NONE

  
\_\_\_\_\_  
JAMES C. JANNEY, MAYOR

ATTEST:

  
\_\_\_\_\_  
JACQUELINE M. HALD, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JENNIFER W. LYON  
CITY ATTORNEY