

**CALIFORNIA COASTAL COMMISSION**

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September 17, 2018

# Th13g

**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
DENNIS DAVIS, COASTAL ANALYST, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF IMPERIAL BEACH LCP  
AMENDMENT NO. LCP-6-IMB-18-0061-1 (Cannabis Facilities) for Commission  
Meeting of October 10-12, 2018**

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**SYNOPSIS**

The subject LCP implementation plan amendment was submitted and filed as complete on August 24, 2018. Pursuant to Section 30513 of the Coastal Act, the Commission must act on IP amendments within 60 days of filing. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is October 23, 2018. In addition to this amendment, there is another pending LCP item from the City of Imperial Beach, LCPA No. LCP-6-IMB-0060-1 (I.B. Boulevard Enhancement Project), that is scheduled for the October 2018 Commission hearing.

**SUMMARY OF AMENDMENT REQUEST**

The proposed amendment would repeal an existing chapter to the City's Zoning Code/Implementation Plan that prohibited medical marijuana distribution facilities in all zoning districts and replace it with a new chapter (Chapter 19.61/Cannabis Facilities) that would allow for limited commercial cannabis activities in the City subject to regulations. The defined use does not currently legally exist in the City. Under state law, local jurisdictions are authorized to either permit or prohibit the operation of cannabis businesses within their boundaries. Because the authorization and regulation of commercial cannabis activities relate to both the City's zoning and regulatory authority, the City intends to eliminate redundant language in its municipal code by incorporating within the replacement chapter several references to Chapter 4.60 of the City's municipal code, which is not part of the City's LCP. Chapter 4.60 contains the applicable definitions and regulations that specify the zoning district that a cannabis facility may operate in, the number of cannabis facilities allowed in the City, the activities that cannabis facilities are prohibited from engaging in and a violations section. Specifically, the proposed amendment will allow up to two cannabis outlets within the City's C/MU-1 zone on parcels with frontage on State Route 75. Upon approval of the proposed IP amendment, Chapter 4.60 will be incorporated into the certified LCP as part of the implementation plan component.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission approve the proposed IP amendment as submitted. The Commission may reject IP amendments only if the amendment would be inconsistent with the certified Land Use Plan or render the IP inadequate to carry out the LUP. The proposed amendment does not raise any issues relative to consistency with the certified land use plan, as there are no coastal resource impacts or public access issues anticipated to occur from approval. The new use will occur on parcels within the City's C/MU-1 zone within the coastal zone, with frontage on State Route 75. The use will be located at least 900 feet from any identified inconsistent uses, such as schools. As proposed, the new use will be limited to the most urbanized area of the City, and away from wetlands and sensitive habitat areas. Furthermore, the amendment limits the use for up to two sites, neither of which is anticipated to generate significant traffic that could result in adverse impacts to public access. The new use must comply with the City's current parking and signage requirements.

The appropriate resolution and motion begin on Page 4. The findings for approval of the IP Amendment as submitted begin on Page 5.

## **ADDITIONAL INFORMATION**

Further information on the City of Imperial Beach LCP Amendment No. LCP-6-IMB-18-0061-1 may be obtained from Dennis Davis, Coastal Planner, at (619) 767-2370.

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## **EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Ordinance No. 2018-1174](#)

[Exhibit 3 – Ordinance No. 2018-1173](#)

[Exhibit 4 – Proposed Text Changes in Strikeout/Underline](#)

[Exhibit 5 – Potential Cannabis Permitted Use Locations](#)

## **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.

### **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**

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. 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 - RESOLUTION**

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

- I. **MOTION:** *I move that the Commission reject the City of Imperial Beach Implementation Program Amendment No. LCP-6-IMB-18-0061-1 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 Amendment 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**

In March 2013, the Commission approved LCP Amendment No. IMB-MAJ-3-12 (Medical Marijuana Distribution Facilities) that prohibited medical marijuana distribution facilities in all zoning districts within the City. In November 2016, California voters approved Proposition 64, legalizing recreational use of marijuana by people 21 years of age or older. The City of Imperial Beach is only about four square miles in size making

it one of the smallest cities in San Diego County. Due to its size, the City lacks industrial zones that are adequately separated from sensitive land uses that are inconsistent with cannabis facilities (e.g. K-12 schools, licensed day care facilities, etc.).

The proposed amendment would repeal Chapter 19.61 (Medical Marijuana Distribution Facilities) of the City's Zoning Code and replace it with a new chapter, Chapter 19.61 (Cannabis Facilities) that would allow for limited commercial cannabis activities in the City of Imperial Beach subject to regulations. The new chapter defines "Cannabis Permitted Use" through a reference to the previously amended business licensing and regulation chapter of the IBMC which is not part of the certified LCP. Section 4.60.020 of the IBMC defines "Cannabis Permitted Use" as follows:

"Cannabis Permitted Use" or "Cannabis Permitted Uses" means a Cannabis Outlet as described in this chapter.

"Cannabis Outlet" means a retail establishment operating with a Regulatory Safety Permit in accordance with this chapter, where cannabis, cannabis products, and cannabis accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2 respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing cannabis and medical cannabis. A Cannabis Outlet shall not engage in cultivation, manufacturing or testing of cannabis or cannabis products. A Cannabis Outlet shall not include clinics licensed by the state and properly operating pursuant to the provisions of Division 2 of the California Health and Safety Code.

The amendment would allow up to two Cannabis Permitted Uses to operate only within the C/MU-1 (General Commercial and Mixed Use) zone of the City. A Cannabis Permitted Use will also be required to have frontage along State Route 75 and must be 900 feet away from any incompatible uses. A number of prohibitions and penalties are also defined in the proposed chapter.

Additionally, the amendment would also modify a land use table, Section 19.23.010 of the City's Zoning Code, to include Cannabis Permitted Use as a new permitted use within the City's C/MU-1 zone consistent with the new regulations.

## **B. FINDINGS FOR APPROVAL**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

### **1) Purpose and Intent of the Ordinance**

The primary goal of the City's amendment is to accommodate a new use in the City that will allow for limited commercial cannabis activities subject to regulation. The amendment is intended to be consistent with state law such that it does not interfere with state laws that regulate medical marijuana.

**2) Major Provisions of the Ordinance**

The major provisions of the proposed ordinance would achieve the following goals: (1) define “Cannabis Permitted Use” and “Cannabis Outlet;” (2) restrict the operation of a cannabis facility only to the C/MU-1 (General Commercial and Mixed Use) zone with frontage along State Route 75; (3) provide a separation requirement of 900 feet between a Cannabis Permitted Use and an incompatible use such as a K-12 school; (4) require a twenty-foot landscape buffer from residential zones; (5) provide a list of prohibited activities for a Cannabis Permitted Use; (6) provide penalties for the violation of any provisions listed in the new Chapter 19.61 of the City’s Zoning Code/Implementation Plan; and (7) modify the City’s land use table to include “Cannabis Permitted Use” as a new permitted use only in the C/MU-1 zone.

**3) Adequacy of the Ordinance to Implement the Certified LUP Segments**

The Commission can only reject an IP amendment where it can be shown that the amendment would be inconsistent with the certified LUP or render the IP inadequate to carry out the LUP. In past Commission actions regarding LCP amendments addressing marijuana distribution, the Commission has consistently found that the subject of marijuana use and its availability to the public is not a Coastal Act issue.

The City has been concerned about the adverse effects associated with cannabis dispensaries especially the impact that a large number of cannabis retail outlets would have on the City’s small beach town character. In its review of the amendment, the City cited the following LUP policy:

**Land Use Element**

Goal 11 Small Beach Oriented Town: The overriding goal for Imperial Beach shall be the retention of the quality of life and atmosphere of a small beach-oriented town. . . . Specific aspects of this goal include:

[ . . . ]

**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 City determined that a large number of cannabis retail outlets would be inconsistent with the above cited goal; however, allowing a limited number of strictly regulated cannabis retail outlets would foster development of a broader tax base while maintaining the atmosphere of a small beach-oriented town. Any new development associated with

the Cannabis Permitted Use would require a coastal development permit (CDP) and demonstrate consistency with the certified LCP. The use would also be required to comply with retail parking and signage standards. No coastal resource impacts or public access issues are anticipated to occur from the addition of the new commercial use in the IP, especially when limited to no more than two sites with State Route 75 frontage. Additionally, allowing for limited commercial cannabis activities within the City does not in any way reduce the adequacy of the IP to carry out the provisions of the LUP. Therefore, the proposed IP Amendment is consistent with the goals and policies of the certified LUP and the amendment may be approved as submitted.

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

Section 21080.9 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 submission.

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. The City determined that the proposed amendment was CEQA exempt under Section 15061(b)(3) of the CEQA guidelines. Allowing for limited commercial cannabis activities within an existing commercial zone has almost no potential to cause significant effect on the environment. Thus, the IP amendment, as submitted, conforms to CEQA.