



# A G E N D A



**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**

**JULY 7, 2010**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**CLOSED SESSION MEETING – 5:30 P.M.  
REGULAR MEETING – 6:00 P.M.**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY,  
PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

**CLOSED SESSION CALL TO ORDER BY MAYOR**

**ROLL CALL BY CITY CLERK**

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(a)

Name of Case: Imperial Beach Redevelopment Agency v. Shawki Bochoua  
dba Southbay Drugs

Case No. 37-2010-00030617-CL-UD-SC

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(a)

Name of Case: Imperial Beach RDA v. James E. Sides, Jr., et al.

Case No. 37-2010-00075370-CU-EI-SC

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(a)

Name of Case: Imperial Beach RDA v. Deborah A. Sides, et al.

Case No. 37-2010-00075462-CU-EI-SC

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Government Code section 54956.9(b)(3)(A)

No. of Cases: 1

**RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)**

**REGULAR MEETING CALL TO ORDER BY MAYOR**

**ROLL CALL BY CITY CLERK**

**PLEDGE OF ALLEGIANCE**

**AGENDA CHANGES**

Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

**MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/REPORTS ON ASSIGNMENTS AND COMMITTEES**

**COMMUNICATIONS FROM CITY STAFF**

**PUBLIC COMMENT** - Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.

**PRESENTATIONS (1.1)**

**1.1\* RECOGNITION OF "BE KIND TO ANIMALS MONTH" POSTER CONTEST WINNERS. (0410-30)**

\*No Staff Report.

**CONSENT CALENDAR (2.1 - 2.6)** - All matters listed under Consent Calendar are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items, unless a Councilmember or member of the public requests that particular item(s) be removed from the Consent Calendar and considered separately. Those items removed from the Consent Calendar will be discussed at the end of the Agenda.

**2.1 MINUTES.**

City Manager's Recommendation: Approve the minutes of the Regular City Council meeting of June 2, 2010.

**2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)**

City Manager's Recommendation: Ratify the following registers: Accounts Payable Numbers 71054 through 71199 with the subtotal amount of \$1,598,970.02 and Payroll Checks 42679 through 42736 for the pay period ending 06/03/10 with the subtotal amount of \$157,256.66, and Payroll Checks 42737 through 42799 for the pay period ending 06/17/10 with the subtotal amount of \$197,118.16 for a total amount of \$1,953,344.84.

**2.3 RESOLUTION NO. 2010-6913 – AUTHORIZING THE SALE OF CERTAIN SURPLUS CITY EQUIPMENT. (0380-45)**

City Manager's Recommendation: Adopt resolution.

**2.4 RESOLUTION NO. 2010-6915 – RATIFYING AN AGREEMENT WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR PROMOTIONAL SERVICES AT THE 4TH OF JULY FIREWORKS SHOW IN CONJUNCTION WITH THE 10<sup>TH</sup> ANNUAL BIG BAY BOOM FIREWORKS SPECTACULAR. (1040-10)**

City Manager's Recommendation: Adopt resolution.

**2.5 RESOLUTION NO. 2010-6909 – AUTHORIZING FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES TO SERVE AS PART-TIME ASSISTANT CITY MANAGER. (0530-60)**

City Manager's Recommendation: Adopt resolution.

**2.6 KAMAL NONA (OWNER)/STOSH THOMAS (ARCHITECT); TIME EXTENSION FOR A CONDITIONAL USE PERMIT (CUP 060398), DESIGN REVIEW CASE (DRC 060399), SITE PLAN REVIEW (SPR 060400) FOR TWO MIXED USE DEVELOPMENTS WITH TWO RETAIL COMMERCIAL UNITS AND TWO RESIDENTIAL UNITS FOR EACH DEVELOPMENT (FOUR COMMERCIAL AND FOUR RESIDENTIAL UNITS TOTAL) LOCATED AT 1120, 1122 13<sup>TH</sup> STREET AND 1150, 1152 13<sup>TH</sup> STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863. (0600-20)**

City Manager's Recommendation: Adopt Resolution No. 2010-6910, approving a six (6) month time extension for Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400), which makes the necessary findings and provides conditions of approval in compliance with local and state requirements.

### **ORDINANCES – INTRODUCTION/FIRST READING/PUBLIC HEARING (3.1)**

#### **3.1 ORDINANCE NO. 2010-1107 – AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR. (0610-95)**

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report and public testimony;
3. Close the public hearing;
4. Mayor calls for the reading of the title of amended Ordinance No. 2010-1107, "AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR";
5. City Clerk to read Ordinance No. 2010-1107; and
6. Motion to dispense the first reading and adopt, with a four-fifths vote, Ordinance No. 2010-1107 by title only.
7. Give City staff guidance about how the Council would like dispensaries regulated – a total ban, tight regulation, or loose regulation – and provide a timeframe for when staff should report back to Council.

### **ORDINANCES – SECOND READING & ADOPTION (4)**

None.

### **PUBLIC HEARINGS (5.1)**

#### **5.1 PLANNING COMMISSION INTERPRETATION (PCI 100040) TO DETERMINE APPROPRIATE CLASSIFICATION AND/OR CRITERIA FOR ALLOWING OUTDOOR USES. MF 1048. (0620-95)**

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report and public testimony;
3. Close the public hearing; and
4. Consider and select among the options listed in the Staff Report or other alternatives to provide direction to staff on how to handle push carts and outdoor vendors.

### **REPORTS (6.1 - 6.7)**

#### **6.1 RESOLUTION NO. R-10-224 – AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS CONTRACT – SKATE PARK ELEMENT CIP (P07-101). (0920-40)**

City Manager's Recommendation: Adopt resolution.

#### **6.2 LETTER OF INTENT AND PROPOSED PORT FUNDING FOR THE ARMY CORPS OF ENGINEERS' SAN DIEGO HARBOR MAINTENANCE DREDGE AND FOR THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) REGIONAL BEACH SAND PROJECT II. (0140-40 & 0220-70)**

City Manager's Recommendation:

1. Authorize the issuance of a Letter of Intent to enter into a Memorandum of Agreement between the City of Imperial Beach and the Department of the Army for participation in the San Diego Harbor Maintenance Dredging Project;
2. Support the use of Port District funds for the San Diego Harbor Maintenance Dredging Project;
3. Support the idea of approaching the State Department of Boating and Waterways about the possibility of re-scoping the \$4.2 million of Public Beach Restoration funds to the San Diego Association of Governments (SANDAG) Regional Beach Sand Project II; and
4. Support the use of approximately \$700,000 of Port District funds towards the local share of the State Department of Boating and Waterways funds.

**Continued on Next Page**

**REPORTS (Continued)**

**6.3 CODE ENFORCEMENT – WEED & RUBBISH ABATEMENT. (0250-70 & 0470-20)**

City Manager’s Recommendation: Adopt Resolution No. 2010-6912 – finding and declaring that weeds, brush, rubbish and refuse upon or in front of specified properties in the City are a seasonal and recurrent public nuisance, and declaring its intention to provide for the abatement thereof and schedule a weed and rubbish abatement public hearing to hear objections on July 21, 2010.

**6.4 RESOLUTION NO. 2010-6911 – AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF IMPERIAL BEACH AND SWEETWATER UNION HIGH SCHOOL DISTRICT FOR SERVICES OF A SPECIAL PURPOSE SCHOOL RESOURCE OFFICER. (1010-20)**

City Manager’s Recommendation: Adopt resolution.

**6.5 RESOLUTION NO. 2010-6914 – RESPONSE TO JUNE 7, 2010 GRAND JURY REPORT ENTITLED “MEDICAL MARIJUANA IN SAN DIEGO”. (0440-25)**

City Manager’s Recommendation: Adopt resolution.

**6.6 DESIGNATION OF VOTING DELEGATE AND ALTERNATE FOR LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE – SEPTEMBER 15-17, 2010. (0140-10)**

City Manager’s Recommendation:

1. Designate a voting delegate and up to two voting alternates for the 2010 League Annual Conference and
2. Direct staff to complete and submit a Voting Delegate Form to the League office by Friday, August 20, 2010.

***Item No. 6.7 will be discussed at 7:00 p.m. – TIME SPECIFIC***

**6.7 COMMERCIAL ZONING REVIEW – CONTINUED FOCUS DISCUSSION ON COMMERCIAL ZONING DESIGN GUIDELINES. (0610-95)**

City Manager’s Recommendation: Support the adoption of the key design guidelines as listed in the Staff Report for the City’s Commercial/Mixed-Use Zones. It is further recommended that these design guidelines be adopted concurrently with the other proposed zoning amendments when they are presented to the City Council for adoption.

**ITEMS PULLED FROM THE CONSENT CALENDAR (IF ANY)**

**ADJOURNMENT**

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City’s decision-making process.

FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT

[www.cityofib.com](http://www.cityofib.com).

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Jacqueline M. Hald, CMC  
City Clerk

**DRAFT**

**MINUTES**

**Item No. 2.1**

**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**

**JUNE 2, 2010**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**CLOSED SESSION & SPECIAL CLOSED SESSION MEETING – 5:30 P.M.  
REGULAR MEETING – 6:00 P.M.**

**CALL TO ORDER**

MAYOR JANNEY called the Regular and Special Closed Session Meetings to order at 5:33 p.m.

**ROLL CALL**

Councilmembers present: Bragg, McCoy  
Councilmembers absent: Rose  
Mayor present: Janney  
Mayor Pro Tem present: King

Staff present: City Manager Brown; City Attorney Lyon; City Clerk Hald

**CLOSED SESSION**

**MOTION BY MCCOY, SECOND BY BRAGG, TO ADJOURN TO CLOSED SESSION UNDER:**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(a)  
Name of Case: Imperial Beach Redevelopment Agency v. Shawki Bochoua  
dba Southbay Drugs  
Case No. 37-2010-00030617-CL-UD-SC

Pursuant to Government Code Section 54956.9(a)  
Name of Case: United States & States of California, Delaware et al. ex rel. Hendrix v.  
J-M Manufacturing Co., Inc. et al.  
United States District Course Case No. ED CV-06-0055-GW

**MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>

MAYOR JANNEY adjourned the meeting to Closed Session at 5:34 p.m. and he reconvened the meeting to Open Session at 6:00 p.m. Reporting out of Closed Session, MAYOR JANNEY announced Council met earlier in Closed Session, received information from staff, gave direction and had no reportable action.

**REGULAR MEETING CALL TO ORDER**

MAYOR JANNEY called the Regular Meeting to order at 6:00 p.m.

**ROLL CALL**

Councilmembers present: Bragg, McCoy, Rose (arrived at 6:30 p.m.)  
Councilmembers absent: None  
Mayor present: Janney  
Mayor Pro Tem present: King

Staff present: City Manager Brown; City Attorney Lyon; City Clerk Hald

**PLEDGE OF ALLEGIANCE**

MAYOR JANNEY led everyone in the Pledge of Allegiance.

**AGENDA CHANGES**

None.

**MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/REPORTS ON ASSIGNMENTS AND COMMITTEES**

COUNCILMEMBER MCCOY reported on City Council's attendance at the annual Memorial Day service at Veterans Park; and she spoke about Mayor Janney's and her participation in the Library's Local Heroes Storytime.

MAYOR JANNEY also spoke about the Local Heroes Storytime event and thanked the librarian for having a reading program for the children; he attended the Kiwanis fundraiser at the Tijuana Estuary where funds raised went towards the local Boys and Girls Club.

**COMMUNICATIONS FROM CITY STAFF**

None.

**PUBLIC COMMENT**

None.

**PRESENTATIONS (1.1)**

**1.1 PRESENTATION ON EAGLE SCOUT PROJECT – REPLACEMENT OF PORT PARKING LOT FENCE LOCATED AT SEACOAST DRIVE AND PALM AVENUE. (0150-70)**

COUNCILMEMBER BRAGG announced she had a potential conflict of interest on the item due to the location of her place of employment and left Council Chambers at 6:04 p.m.

PUBLIC WORKS DIRECTOR LEVIEN reported on the project.

EAGLE SCOUT CANDIDATES SEBASTIAN ADAMS AND PETER ERBES presented their project proposals.

MAYOR PRO TEM KING suggested the footing be raised to avoid deterioration and rot of the fence posts.

City Council appreciated the efforts of Public Works Director Levien and his boy scout troop for completing many Eagle Scout projects in the City.

COUNCILMEMBER BRAGG returned to Council Chambers at 6:10 p.m.

**PUBLIC COMMENT**

TIM O'NEAL thanked City Council and staff for their continued efforts to complete the Skate Park project and he offered assistance with raising funds for the project.

**CONSENT CALENDAR (2.1 - 2.4)**

**MOTION BY KING, SECOND BY MCCOY, TO APPROVE CONSENT CALENDAR ITEM NOS. 2.1, 2.2 AND 2.4. MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>

COUNCILMEMBER MCCOY announced she had a potential conflict of interest on Item No. 2.3 as her residence is within 500 feet of the project.

**WITH REGARD TO ITEM NO. 2.3, MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBER:</b>	<b>MCCOY (DUE TO A POTENTIAL CONFLICT OF INTEREST)</b>

**2.1 MINUTES.**

Approved the minutes of the Regular City Council meetings of March 17 and May 19, 2010.

**2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)**

Ratified the following registers: Accounts Payable Numbers 70919 through 70986 with the subtotal amount of \$186,939.89 and Payroll Checks 42561 through 42614 for the pay period ending 05/06/10 with the subtotal amount of \$147,207.91, for a total amount of \$334,147.80.

**2.3 GREG AND ELTA NEIL [OWNER/APPLICANT]: TIME EXTENSION DETERMINATION FOR CONDITIONAL USE PERMIT (CUP 05-285) AND SITE PLAN REVIEW (SPR 05-286) FOR A MIXED-USE PROJECT LOCATED AT 198-200 PALM AVENUE, IN THE SEACOAST COMMERCIAL (C-2) ZONE. MF 807. (0600-20)**

Adopted Resolution No. 2010-6892, approving a time extension for Conditional Use Permit (CUP 05-285) and Site Plan Review (SPR 05-286), which makes the necessary findings and provides conditions of approval in compliance with local and state requirements.

**2.4 RESOLUTION NO. 2010-6893 – RENEWAL OF MICHAL PIASECKI CONSULTING CONTRACT FOR FISCAL YEAR 2010/11. (1110-05)**

Adopted resolution.

**ORDINANCES – INTRODUCTION/FIRST READING (3.1 - 3.2)**

**3.1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 2010-1106 – APPROVING AND DESIGNATING A SKATEBOARD PARK IN THE CITY OF IMPERIAL BEACH AND AMENDING IMPERIAL BEACH MUNICIPAL CODE CHAPTERS 9.10 AND 12.56. (0920-40 & 0920-95)**

CITY MANAGER BROWN introduced the item.

TIM O'NEAL indicated support for the item (he did not wish to speak).

COUNCILMEMBER KING stated that at a previous City Council meeting he requested the Skate Park signage be rewritten so it was more welcoming and he requested a copy of the new text.

MAYOR JANNEY called for the reading of the title of Ordinance No. 2010-1106.

CITY CLERK HALD read the title of Ordinance No. 2010-1106, "An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING IMPERIAL BEACH MUNICIPAL CODE CHAPTER 9.10, RELATING TO SKATEBOARD AND ROLLER SKATE RIDING; AMENDING CHAPTER 12.56 RELATING TO USE OF PUBLIC PARKS AND FACILITIES; AND APPROVING AND DESIGNATING A SKATEBOARD PARK IN THE CITY OF IMPERIAL BEACH."

**MOTION BY MCCOY, SECOND BY BRAGG, TO WAIVE FURTHER READING AND DISPENSE INTRODUCTION OF ORDINANCE NO. 2010-1106 BY TITLE ONLY AND SET THE MATTER FOR ADOPTION AT THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING. MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>

**3.2 INTRODUCTION & FIRST READING OF ORDINANCE NO. 2010-1105 – AMENDING CHAPTER 10.28, SECTION 10.28.020, SPECIAL SPEED ZONE DESIGNATED. (0750-95)**

CITY MANAGER BROWN introduced the item.

MAYOR JANNEY called for the reading of the title of Ordinance No. 2010-1105.

CITY CLERK HALD read the title of Ordinance No. 2010-1105, "An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING CHAPTER 10.28, SECTION 10.28.020, OF THE MUNICIPAL CODE OF THE CITY OF IMPERIAL BEACH RELATING TO SPECIAL SPEED ZONES DESIGNATED."

**MOTION BY KING, SECOND BY BRAGG, TO WAIVE FURTHER READING AND DISPENSE INTRODUCTION OF ORDINANCE NO. 2010-1105 BY TITLE ONLY AND SET THE MATTER FOR ADOPTION AT THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING. MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>

MAYOR JANNEY asked staff to report back to City Council with ways of reducing the speed limit on certain streets in the City to make the City pedestrian and bicycle friendly and suggested staff look at all types of traffic calming measures.

COUNCILMEMBER MCCOY stated some residents have expressed interest in paying for speed bumps.

MAYOR PRO TEM KING suggested staff should look at a number of options applicable to where speed is excessive.

**ORDINANCES – SECOND READING & ADOPTION (4.1)**

**4.1 SECOND READING AND ADOPTION OF ORDINANCE NO. 2010-1104 – AMENDING CHAPTERS 4.04, BUSINESS LICENSES GENERALLY, AND 4.56, SMOKE SHOPS, OF THE CITY OF IMPERIAL BEACH MUNICIPAL CODE RELATED TO THE CONTINUATION OF LAWFULLY ESTABLISHED BUSINESSES. (0390-95)**

CITY MANAGER BROWN introduced the item.

MAYOR JANNEY called for the reading of the title of Ordinance No. 2010-1104.

CITY CLERK HALD read the title of Ordinance No. 2010-1104, “An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING CHAPTERS 4.04, BUSINESS LICENSES GENERALLY, AND 4.56, SMOKE SHOPS, OF THE CITY OF IMPERIAL BEACH MUNICIPAL CODE RELATED TO THE CONTINUATION OF LAWFULLY ESTABLISHED BUSINESSES.”

**MOTION BY MCCOY, SECOND BY BRAGG, TO DISPENSE WITH THE SECOND READING AND ADOPT ORDINANCE NO. 2010-1104 BY TITLE ONLY. MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE</b>

**PUBLIC HEARINGS (5)**

None.

**REPORTS (6.1 - 6.3)**

**6.2 CODE ENFORCEMENT REPORT – SYSTEMATIC CODE COMPLIANCE. (0470-90)**

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a PowerPoint presentation on the item and reviewed various options for implementing a Systematic Code Enforcement program.

City Council discussed the various options presented; there was consensus of City Council to consider a Systematic Code Compliance program that focuses on a specific violation type that falls within a specific geographic area; it was discussed that complaints would have a higher priority over the systematic violations unless there is a life safety issue; and there was support for purchasing technology equipment.

CITY MANAGER BROWN stated staff would return with a program proposal in August followed by a program review six months later.

***Item No. 6.3 discussed at 7:00 p.m. – TIME SPECIFIC***

**6.3 COMMERCIAL ZONING REVIEW – CONTINUED FOCUS DISCUSSION ON INCENTIVES FOR ADDITIONAL BUILDING HEIGHT AND RESIDENTIAL DENSITY. (0610-95)**

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a PowerPoint presentation on the proposed incentives for height and density.

In order to create viable commercial space, City Council supported a 15-foot ceiling height for first floor retail in all the zones as a requirement rather than as an incentive.

MICHAEL CAREY expressed concern about the amount of time the Commercial Zoning review is taking; he agreed that the 15-foot height limit should apply to all of the zones; he supported high quality design of two stories with residential on the top floor.

City Council recommended applicants must achieve two incentives from the following list in order to achieve increased building height and density:

- Lot Consolidation
- Exceptional Architectural Design
- Green Building Design (LEED Certified or Equivalent)
- Active Street Level (Commercial) Use
- Retail Design
- Provision of 3-bedroom units
- Provision of affordable For Sale units
- Provision of Open Space, Plaza Space Public/Community Amenities
- Public Right-of-Way Dedication
- Greater Upper Floor Stepback from Residential Property
- 15-foot First Floor Retail Ceiling Height

City Council also expressed concern about the amount of time they have spent on review and supported moving on with the process; there was support for high quality residential; there was consensus of City Council to hold a special meeting, rather than a workshop, on July 13 to focus on Commercial Zoning; at the next City Council meeting return with an updated matrix and timeline and a review on active retail use and stand-alone residential.

**6.1 RESOLUTION NO. 2010-6894 – APPROVING PLACEMENT OF AN OCEAN AND BEACH SURVEILLANCE CAMERA AT THE PALM AVENUE STREET END PLAZA. (0220-20)**

COUNCILMEMBER BRAGG announced she had a conflict of interest on the item due to the location of her place of employment and left Council Chambers at 8:20 p.m.

COUNCILMEMBER MCCOY announced she had a conflict of interest on the item due to the location of her residence and left Council Chambers at 8:20 p.m.

CITY MANAGER BROWN introduced the item.

LIFEGUARD CAPTAIN STABENOW gave a report on the item.

TIM O'NEAL spoke in support of the item; he suggested the jetty be removed for public safety reasons; and also suggested a monitor be installed allowing lifeguards to communicate with visitors.

**MOTION BY KING, SECOND BY ROSE, TO ADOPT RESOLUTION NO. 2010-6894 – APPROVING THE PLACEMENT OF AN OCEAN AND BEACH SURVEILLANCE CAMERA AT THE PALM AVENUE STREET END PLAZA. MOTION CARRIED BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>ROSE, KING, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBERS:</b>	<b>MCCOY, BRAGG (DUE TO POTENTIAL CONFLICTS OF INTEREST)</b>

**ADJOURNMENT**

MAYOR JANNEY adjourned the meeting at 8:30 p.m.

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James C. Janney, Mayor

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Jacqueline M. Hald, CMC  
City Clerk





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY R. BROWN, CITY MANAGER

**MEETING DATE:** July 7, 2010

**ORIGINATING DEPT.:** Michael McGrane *m2*  
Finance Director

**SUBJECT:** RATIFICATION OF WARRANT REGISTER

**BACKGROUND:**

None

**DISCUSSION:**

As of April 7, 2004, all large warrants above \$100,000 will be separately highlighted and explained on the staff report.

Vendor	Check	Amount	Explanation
S.D.County Sheriff	71186	\$1,315,541.81	Law Enforcement Services-Feb/March/April 2010

**ENVIRONMENTAL IMPACT**

Not a project as defined by CEQA.

The following registers are submitted for Council ratification.

**WARRANT #                      DATE                      AMOUNT**

**Accounts Payable**

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71054-71087	06/11/10	\$	66,949.40
71088-71141	06/17/10		83,542.40
71142-71199	06/25/10		1,448,478.22
			<hr/>
	<b>Sub-Total</b>	<b>\$</b>	<b>1,598,970.02</b>

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(\*) Checks #70154-70191 are out of sequence due to check numbers assigned in error.

**Payroll Checks:**

42679-42736	P.P.E. 06/03/10	157,256.66
42737-42799	P.P.E. 06/17/10	197,118.16
		\$ <u>354,374.82</u>
	<b>TOTAL</b>	\$ <u>1,953,344.84</u>

**FISCAL IMPACT:**

**Warrants are issued from budgeted funds.**

**DEPARTMENT RECOMMENDATION:**

**It is respectfully requested that the City Council ratify the warrant register.**

**CITY MANAGER'S RECOMMENDATION:**

**Approve Department recommendation**



Gary Brown, City Manager

**Attachments:**

1. Warrant Registers

PREPARED 06/28/2010, 16:33:34  
 PROGRAM: GM350L  
 CITY OF IMPERIAL BEACH

A/P CHECKS BY PERIOD AND YEAR  
 FROM 06/11/2010 TO 06/25/2010

PAGE 1

BANK CODE 00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT	
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR	TRN AMOUNT
06/11/2010	71054	AGRICULTURAL PEST CONTROL	123	190.00	
101-1910-419.21-04	04/27/2010	APRIL 2010	216157	010126 10/2010	95.00
101-1910-419.21-04	01/26/2010	RODENT CONTROL/MAIT	210151	010126 10/2010	95.00
06/11/2010	71055	BAY CITY ELECTRIC WORKS	369	456.25	
101-1910-419.21-04	04/19/2010	MAIT ON GENERATOR	W78532	010137 10/2010	456.25
06/11/2010	71056	CDW GOVERNMENT INC	725	5,008.30	
503-1923-419.50-04	03/04/2010	LAPTOPS MONITOR	BNCK528	010993 10/2010	2,283.60
503-1923-519.30-22	03/04/2010	LAPTOPS MONITOR	BNCK528	010993 10/2010	941.20
503-1923-419.21-04	02/25/2010	MISC. NOT CLASSIFIED	RVZ0455	010854 10/2010	1,783.50
06/11/2010	71057	CHARLES E. BLACK	2218	7,700.00	
101-0000-221.01-02	06/09/2010	APRIL 2010 CONSULTING SVC	04-30-2010	12/2010	7,700.00
06/11/2010	71058	CHEMETRICS INC	776	192.12	
601-5050-436.30-02	05/06/2010	TEST KIT/REFILL PACK	324716	11/2010	170.65
601-5050-436.30-02	05/21/2010	RTN REFILL PACK	325417	11/2010	63.00-
601-5050-436.30-02	05/18/2010	TEST KIT	325207	11/2010	84.47
06/11/2010	71059	CVA SECURITY	797	60.00	
101-1910-419.20-23	05/01/2010	MAY ALALRM MONTERING	15068	010123 11/2010	30.00
101-1910-419.20-23	05/01/2010	MAY ALARM MONTERING	15142	010123 11/2010	30.00
06/11/2010	71060	CMRTA	2	40.00	
101-1210-413.28-04	05/27/2010	CMRTA TRAINING	05-27-2010	11/2010	20.00
101-3070-427.28-04	05/27/2010	CMRTA TRAINING	05-27-2010	11/2010	20.00
06/11/2010	71061	COMMERCIAL LANDSCAPE SUPPLY	944	65.70	
101-6020-452.30-02	04/29/2010	GG MONOFIL/BUMPFEEED	166898	010061 10/2010	29.44
101-6020-452.30-02	04/30/2010	GG MONOFIL	166938	010061 10/2010	36.26
06/11/2010	71062	COUNTY RECORDER	1818	50.00	
101-0000-221.01-02	05/28/2010	NOTICE OF EXEMPTION FEE	05-28-2010	11/2010	50.00
06/11/2010	71063	CWEA-TCP	1117	25.00	
101-5020-432.28-04	06/09/2010	TRAINING/CWEA EXAM	06-08-2010	12/2010	25.00
06/11/2010	71064	DUNN EDWARDS CORPORATION	1197	2,203.75	
101-5010-431.30-02	04/30/2010	PAINT	2068047224	010232 10/2010	1,100.00
405-5030-433.30-02	04/30/2010	PAINT	2068047224	010232 10/2010	1,103.75
06/11/2010	71065	EPIC LAND SOLUTIONS, INC.	2105	7,588.79	
408-1920-519.20-06	04/30/2010	APRIL 10 PALM AVE RELOCAT	0410-0190	010328 10/2010	7,588.79
06/11/2010	71066	GRAINGER	1051	1,085.59	
101-6040-454.30-02	05/13/2010	DISPENSER W/TAPE	9251948437	010076 11/2010	43.82
101-6040-454.30-02	03/29/2010	FUSE	9216820341	010076 10/2010	90.24
601-5060-436.30-02	04/14/2010	501 LOCKS	9228388157	010076 10/2010	55.39

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR TRN AMOUNT
601-5060-436.30-02	04/14/2010	501 LOCKS	9228688140	010076 10/2010 216.04
601-5060-436.30-02	04/14/2010	BARRICADE BATTERIES	9228688165	010076 10/2010 60.88
101-1910-419.30-02	04/26/2010	HYDRAULIC DOOR CLOSER	9237702304	010076 10/2010 152.25
405-5030-433.30-02	04/29/2010	SAFETY EYEWEAR	9241192328	010076 10/2010 40.54
601-5060-436.30-02	05/13/2010	KEYED CUSTOM PROD	9251426582	010076 11/2010 167.87
101-6020-452.30-02	04/08/2010	WALL PACK LAMP	9224258211	010076 10/2010 104.83
601-5060-436.30-02	04/29/2010	LOCK FOR SHOP/KEYED	9240946211	010076 10/2010 153.73
06/11/2010	71067	GTC SYSTEMS INC	1910	
503-1923-419.21-04	05/12/2010	PROF SVCS/CONSULT	GTCQ13072	011068 11/2010 665.00
06/11/2010	71068	HDL COREN & CONE	88	
101-1920-419.20-06	05/11/2010	CONTRACT SVC/PROPERTY TX	0015716-IN	010241 11/2010 3,000.00
101-1210-413.20-06	05/14/2010	CONTRACT SVC/SALES TAX	0016478-IN	010241 11/2010 2,025.00
06/11/2010	71069	I B FIREFIGHTERS ASSOCIATION	214	
101-0000-209.01-08	06/10/2010	PR AP PPE 6/3/10	20100610	12/2010 216.50
06/11/2010	71070	ICMA RETIREMENT TRUST 457	242	
101-0000-209.01-10	06/10/2010	PR AP PPE 6/3/10	20100610	12/2010 5,284.62
06/11/2010	71071	DOCUFLOW SOLUTIONS	367	
503-1923-419.28-01	04/22/2010	ANNUAL PRINTER MAINT	5005	011078 10/2010 412.50
06/11/2010	71072	KAMAN INDUS TECHNOLOGIES	583	
601-5060-436.28-01	04/02/2010	BALL BRG PILLOW BLOCK	F42264	010064 10/2010 341.86
601-5060-436.28-01	04/02/2010	BALL BRG PILLOW BLOCK	V791146	010064 10/2010 170.76
06/11/2010	71073	MASON'S SAW & LAWMOWER	923	
501-1921-419.28-16	05/12/2010	FUEL PUMP	207344	010065 11/2010 18.63
06/11/2010	71074	RICHARD HIDALGO	1462	
101-3030-423.28-04	05/17/2010	REIMB, CSLSA REG & PLANE	05-17-2010	11/2010 561.60
06/11/2010	71075	SEIU LOCAL 221	1821	
101-0000-209.01-08	06/10/2010	PR AP PPE 6/3/10	20100610	12/2010 1,488.52
06/11/2010	71076	SIGNS BY MICKEY	2238	
408-1920-519.20-06	06/02/2010	FACADE-INTL BLENDS/TNT/SI	666999	F01123 12/2010 250.00
06/11/2010	71077	TYRA HIDALGO	2170	
101-1920-419.29-01	06/02/2010	TUITION REIMBURSMENT	06-02-2010	010440 12/2010 370.00
06/11/2010	71082	U.S. BANK	1873	
101-1020-411.30-01	03/09/2010	CREDIT FOR DUPLICATE TRAN	2250323	010920 09/2010 20,771.16
101-1110-412.28-04	02/24/2010	LUNCH MTG W/CITY ATTY	034058	010931 10/2010 15.18-
101-1110-412.29-04	02/22/2010	YOUSENDIT	02-22-2010	010938 10/2010 21.20
101-3060-426.21-04	02/24/2010	CREDIT	02-24-2010	010940 10/2010 9.99
101-3020-422.21-02	02/25/2010	FILIPPIS PIZZA GROTTA-A/C	02-25-2010	010940 10/2010 118.90-
101-3050-425.21-04	02/25/2010	EXPLORER 390	663320	010940 10/2010 36.76

VOID 71078-71081

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-1210-413.28-12	02/01/2010	SUGA MEMBERSHIP/BUANGAN	SUGA10393	010950	10/2010	195.00
101-1210-413.29-04	02/25/2010	FLOWERS	40046074	010950	10/2010	57.73
101-1020-411.28-04	03/15/2010	HALD/ADVENTURES IN EDUCAT	03-15-2010	010914	10/2010	510.00
101-1110-412.28-04	03/10/2010	LUNCH MTG/STAFF	012538	010931	10/2010	25.42
101-1010-411.28-04	03/01/2010	COUNCIL DINNER 03/03/10	032649	010938	10/2010	75.00
101-1010-411.28-04	03/02/2010	BUSINESS EXPO	03-02-2010	010938	10/2010	314.83
101-1010-411.28-04	03/02/2010	BUSINESS EXPO	03-02-2010	010938	10/2010	204.95
101-1010-411.29-04	03/18/2010	RIBBON FOR SOCCER FIELD C	010785	010938	10/2010	12.95
101-1110-412.28-04	03/18/2010	BUSINESS EXPO REFRESHMENT	19675	010938	10/2010	101.00
101-1110-412.28-04	03/18/2010	BUSINESS EXPO REFRESHMENT	6755040122259	010938	10/2010	120.58
101-3060-426.21-04	03/02/2010	GLOBALSTAR	03-02-2010	010940	10/2010	37.80
101-3060-426.21-04	03/08/2010	SATCOM DIRECT-SVC EMERG	03-08-2010	010940	10/2010	79.90
101-3070-427.28-12	02/22/2010	GARCIAS, D-CACEO MEMBERSHI	1025604	010921	10/2010	75.00
101-3070-427.28-12	02/23/2010	SIMMONS, T-CACEO MEMBERSHI	1025033	010921	10/2010	75.00
101-3030-423.25-03	02/22/2010	LG SUNGLASSES	100004225	010949	10/2010	410.67
101-3030-423.30-02	02/23/2010	PWC LANYARDS	14181	010949	10/2010	82.38
101-3030-423.30-02	02/26/2010	RESCUE EQUIP/ROPE, SWIM FI	014	010949	10/2010	898.27
101-3040-424.30-01	03/17/2010	BLDG DEPT-TAPE/BOXES	3671	010928	10/2010	33.33
101-1010-411.28-04	03/18/2010	MCCOU, P/FUEL-CONF TRAVEL	9641387	010939	10/2010	41.97
101-1010-411.28-04	03/19/2010	MCCOY, P-LUNCH AT CONF	048005	010939	10/2010	16.64
101-1010-411.28-04	03/19/2010	TIRE CHAINS/YOSEMITE CONF	5067	010939	10/2010	43.49
101-3030-423.28-04	03/04/2010	CONF PARKING	174599	010949	10/2010	10.00
101-3030-423.30-02	03/05/2010	LG TRK TIE DOWN STRAPS	61545	010949	10/2010	179.44
101-3030-423.30-02	03/05/2010	LG SGT LAPTOP BAG	868599	010949	10/2010	43.45
101-3030-423.25-03	03/11/2010	LG EQUIPMENT-SWIM FINS	17159A	010949	10/2010	1,090.95
101-3030-423.30-02	03/18/2010	LG EQUIP-BAGS	0380600-IN	010949	10/2010	310.56
101-3030-423.28-01	02/22/2010	SALT-AWAY CONCENTRATE	6054	010947	10/2010	329.03
101-3030-423.30-02	02/24/2010	VELCRO STRAPS&RADIO INVER	5863	010948	10/2010	26.51
101-3030-423.28-01	03/08/2010	SALTAWAY BARREL PUMP	1099677713	010947	10/2010	37.52
101-3030-423.28-01	03/11/2010	SPRAYERS FOR SALTAWAY	091336/0191869	010947	10/2010	23.86
101-3030-423.30-02	03/11/2010	LG DIVE GEAR	725010	010947	10/2010	32.58
101-3030-423.30-02	03/12/2010	CHG BY MISTAKE	299218	010947	10/2010	122.24
101-3030-423.28-01	03/15/2010	REPAIRS/MAINT HARDWARE	030609/6572874	010947	10/2010	17.36
101-3030-423.28-01	03/18/2010	WINDOW REPAIR PARTS	031318670	010947	10/2010	32.30
101-3030-423.30-02	03/19/2010	CREDIT FOR CHG MISTAKE	299218 CR	010947	10/2010	122.24
101-3030-423.28-04	03/02/2010	CONF PARKING FEE	0105897964	010948	10/2010	10.00
101-3030-423.30-02	03/05/2010	LG HEADSETS/ROSSETTA STON	19095784	010948	10/2010	256.36
101-3020-422.30-02	03/05/2010	FD-ROSETTA STONE HEADSETS	19095790	010948	10/2010	163.07
101-3030-423.28-01	03/15/2010	WASH COMMAND VEHICLE	044271	010948	10/2010	9.99
101-3030-423.30-02	03/16/2010	WATER THERMOMETER & LINE	053196/5082052	010948	10/2010	24.90
101-3030-423.28-01	03/18/2010	PWC TRAILER WINCH/REPAIR	6128	010948	10/2010	267.73
101-0000-221.01-02	03/04/2010	PLANS REPRINT	27859		10/2010	121.37
101-0000-209.01-03	03/05/2010	KEMPH, J EMP COMP LOAN	BBY01-323665013		10/2010	1,521.54
101-0000-209.01-03	02/24/2010	MORENO, M EMP COMP LOAN	094367		10/2010	1,082.40
101-6010-451.30-02	02/25/2010	HOME DEPOT/CLEANING SUPPL	079613/4020493	010933	10/2010	101.06
101-1130-412.28-04	02/23/2010	QTLY DEPTL LUNCHEON	080554	010936	10/2010	47.52
405-1260-413.30-01	03/15/2010	FOLDERS	512883154-001	010925	10/2010	21.48
101-1230-413.29-02	03/19/2010	E WILCZAK FAREWELL LUNCH	025641	010925	10/2010	108.76
101-1130-412.28-14	03/16/2010	SUBSCRIPTION	157571843	010936	10/2010	216.41
101-6010-451.30-02	03/04/2010	HAND SANITIZER	6818	010933	10/2010	18.61

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR TRN AMOUNT
101-6010-451.30-02	03/05/2010	RECORDING RM KEYS	090283	010933 10/2010 2.72
101-6010-451.30-02	03/15/2010	TRASH BAGS/SMPLE GREEN/M	020306/6017017	010933 10/2010 128.84
101-6010-451.30-02	03/18/2010	TOILET PAPER	055867/3573249	010933 10/2010 28.21
101-6010-451.30-02	03/19/2010	CAFE FOOD	012185	010933 10/2010 148.44
101-1910-419.28-01	03/01/2010	GAS LEAK MVC	10505381	010957 10/2010 272.00
101-6020-452.21-04	03/01/2010	TERMITE TENTING @ SP PARK	300506	010957 10/2010 995.00
101-6020-452.30-02	03/03/2010	GLOVES/PLAYGROUND PAINT	058997/8580701	010957 10/2010 71.36
405-5030-433.28-01	03/04/2010	RINO LINE TOOL BOXES	11769	010957 10/2010 150.00
501-1921-419.50-04	03/09/2010	GRAFFITI TRUCK LIFT	C6864	010957 10/2010 225.00
501-1921-419.50-04	03/09/2010	GRAFFITI TRUCK LIFT	C6864	010957 10/2010 525.00
501-1921-419.28-01	03/11/2010	PARTS FOR BOBCAT	P12181	010957 10/2010 95.73
101-5010-431.25-02	03/11/2010	MOWER DECK RENTAL	272807	010957 10/2010 120.75
101-6020-452.25-02	03/11/2010	MOWER DECK RENTAL	272807	010957 10/2010 120.75
101-6020-452.30-02	03/18/2010	GLOVES	067004/3592256	010957 10/2010 22.45
101-6020-452.21-04	02/20/2010	TREE FERT SERVICES	903175438	010957 10/2010 542.00
405-5030-433.30-02	03/01/2010	625 TRUCK MAINT WAX	737929	010960 10/2010 40.19
405-5030-433.30-02	03/04/2010	GRAFFITI SUPPLIES	024390/7191190	010960 10/2010 196.54
101-6020-452.30-02	03/01/2010	REPLACEMENT WOODSP PK	054788/0014018	010961 10/2010 18.31
101-1910-419.30-02	03/02/2010	FIREHOSE 3WAY SWITCH	046013/9014169	010961 10/2010 8.47
101-6020-452.30-02	03/02/2010	FIREHOSE 3WAY SWITCH	046013/9014169	010961 10/2010 23.08
101-1910-419.30-02	03/17/2010	SP PK R/R DRAIN	008351/4562245	010961 10/2010 9.05
101-5010-431.30-02	03/17/2010	SCULPTURE SUPPLIES	050866/4562211	010961 10/2010 46.96
501-1921-419.30-02	03/17/2010	SCULPTURE SUPPLIES	050866/4562211	010961 10/2010 7.06
101-6020-452.30-02	02/22/2010	TRELLIS WORK SUPPLIES	032730/7595143	010961 10/2010 54.80
101-6040-454.30-02	02/23/2010	TIDELANDS KEYS	045590	010964 10/2010 20.93
501-1921-419.29-04	03/16/2010	CAR WASH	851650	010962 10/2010 8.00
101-6040-454.30-02	03/09/2010	RTND OFFSET CLIPS	03-09-2010	010963 10/2010 4.33-
101-6040-454.30-02	03/09/2010	OFFSET CLIPS	070329	010963 10/2010 4.33
101-6040-454.30-02	03/11/2010	OFFSET CLIPS	8428604-000	010963 10/2010 12.56
101-6040-454.30-02	03/15/2010	#12 WIRE	002712/6561947	010963 10/2010 130.50
101-6040-454.30-02	03/19/2010	DRAIN CLEANING BLADDER	075962/2592402	010963 10/2010 12.54
101-6040-454.30-02	03/19/2010	GLOVES/DRILL BIT/EPOXY	094825/2562452	010963 10/2010 47.37
101-6040-454.30-02	03/01/2010	PIER PLAZA FLAGS	109963B	010964 10/2010 46.01
101-6040-454.30-02	03/04/2010	SAFETY VESTS	065465-00	010964 10/2010 201.62
101-6040-454.30-02	03/18/2010	TRASH CAN LINERS	S10027S	010964 10/2010 436.41
101-1910-419.30-02	03/11/2010	OUTLET COVER/SAFETY CTR	069524/0572451	010966 10/2010 1.16
601-5060-436.29-04	03/18/2010	TAPE	3892	010966 10/2010 3.80
601-5060-436.28-01	02/25/2010	AIR PUMPS	518	010954 10/2010 342.54
601-5060-436.30-02	02/28/2010	CAITRANS BAGS	359	010954 10/2010 344.45
101-6040-454.30-02	02/22/2010	R/R FITTING	S3660357-001	010965 10/2010 3.81
101-5010-431.30-22	02/22/2010	TRENCHING SHOVELS	014800/7197598	010970 10/2010 58.66
101-5010-431.30-02	02/25/2010	ST DEPT TOOL LOCKER KEYS	046600	010970 10/2010 3.50
601-5060-436.28-12	03/10/2010	CWEA DUES/AGUIRRE, J	156308	010954 10/2010 132.00
601-5060-436.30-02	03/19/2010	MOELLER, A SAFETY BOOTS	7537	010954 10/2010 150.00
101-5010-431.30-02	03/01/2010	SPRAY PAINT	093363/0580469	010971 10/2010 34.39
501-1921-419.28-16	03/11/2010	HYDRAULIC HOSES	B59536-001	010974 10/2010 201.47
501-1921-419.30-02	03/01/2010	TRK RACK #141 POWDER COAT	4778	010975 10/2010 175.00
405-1260-513.20-06	03/18/2010	SOCCER BALL/RIBBON CUTTIN	060785	010975 10/2010 16.90
405-1260-513.20-06	03/18/2010	SOCCER FIELD GOALS	218763	010975 10/2010 1,182.60
405-1260-513.20-06	03/18/2010	SOCCER FIELD SIGNAGE	237-20461	010975 10/2010 98.73

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR TRN AMOUNT
101-6040-454.30-02	03/09/2010	1/2 YARD OF CONCRETE	86423210-001	010956 10/2010 142.46
101-6020-452.30-02	03/01/2010	VETS. BALLARD LAMP BALLAS	S3265206.001	010976 10/2010 180.53
101-6020-452.30-02	03/03/2010	MULCH 5 YDS	31421	010976 10/2010 271.82
101-6020-452.30-02	03/04/2010	BALLARD LIGHT PARTS	03042010	010976 10/2010 327.29
101-6020-452.30-02	03/09/2010	LAG BOLTS, SHIELDS	086087/2022738	010976 10/2010 34.25
101-6020-452.30-02	03/10/2010	SOIL AMENDMENT	076087/1203851	010976 10/2010 15.76
101-6020-452.30-02	03/10/2010	PLANT MATERIAL	31704	010976 10/2010 106.38
101-6020-452.30-02	03/15/2010	QCV KEYS	53686819	010976 10/2010 106.01
101-6020-452.30-02	03/16/2010	IRRIGATION SUPPLIES	53699931	010976 10/2010 138.32
101-6020-452.30-02	03/17/2010	PVC GLUE	004400/4592166	010976 10/2010 17.18
101-6020-452.30-02	03/18/2010	MULCH 5 YDS	32091	010976 10/2010 271.82
101-6020-452.30-02	03/30/2010	PARK SUPPLIES	03302010	010976 10/2010 7.86
503-1923-419.28-04	02/24/2010	TECHNICAL BOOKS	020546	010951 10/2010 143.78
503-1923-419.30-22	02/25/2010	VIDEO CABLE	101362	010951 10/2010 10.86
101-1130-412.28-14	03/02/2010	UPDATED LABOR LAW POSTER	152460	010929 10/2010 105.66
101-5020-432.28-04	03/16/2010	MAIN WORKER BOARD INT LUN	12670	010929 10/2010 59.11
101-1130-412.28-14	03/28/2010	RENEWAL-CAL OSHA COMPLIAN	1-6399310	010929 10/2010 299.00
503-1923-419.28-04	03/01/2010	CREDIT ONLINE ORDER MEMBE	03012010	010951 10/2010 79.00-
503-1923-419.30-22	03/02/2010	IPHONE CAR HOLDER	55600	010951 10/2010 32.57
503-1923-419.28-04	03/08/2010	TRAINING FOOD	070104	010951 10/2010 13.91
503-1923-419.28-04	03/15/2010	TRAINING FOOD	03152010	010951 10/2010 17.67
503-1923-419.28-04	03/16/2010	TRAINING FOOD	03162010	010951 10/2010 15.50
503-1923-419.28-04	03/17/2010	TRAINING FOOD	03172010	010951 10/2010 7.47
503-1923-419.28-04	03/18/2010	TRAINING FOOD	03182010	010951 10/2010 15.50
503-1923-419.28-04	03/19/2010	TRAINING FOOD	03192010	010951 10/2010 7.00
101-3020-422.20-06	09/22/2009	FIT TESTS LG&FF	2009-9-1067	010942 10/2010 189.00
101-3020-422.28-11	11/12/2009	UNIFORM NAME BADGES	09-437	010942 10/2010 55.46
101-3050-425.21-04	01/28/2010	NAME BADGE FOR SPRINGFIEL	09-554	010942 10/2010 10.33
101-3060-426.21-04	02/23/2010	EOC DIRECT TV	02232010	010942 10/2010 36.99
101-3020-422.28-12	02/24/2010	NFPA CHIEF'S MEMBERSHIP	02242010	010942 10/2010 150.00
101-3050-425.21-04	02/25/2010	CA HANDBOOKS FOR ACO	2010-0138	010942 10/2010 42.00
101-3020-422.30-02	02/23/2010	SHOWER RACKS	023308	010944 10/2010 21.68
101-3020-422.30-01	02/23/2010	OFFICE SUPPLIES(INDEX CAR	029629	010944 10/2010 10.86
101-3020-422.30-02	03/05/2010	FLOVES FOR CORY COOPER	6779	010942 10/2010 108.31
101-3020-422.28-09	03/09/2010	SHIPPING FOR FIRE PREVENT	03092010	010942 10/2010 6.32
101-3020-422.30-01	03/10/2010	ANIMAL CONTROL OFFICE SUP	03102010	010942 10/2010 121.08
101-3020-422.30-01	03/10/2010	FIRE STATIOFFICE SUPPLIES	03102010	010942 10/2010 16.30
101-3020-422.30-01	03/17/2010	PENCILS, STAPLER, LABELS	03172010	010942 10/2010 66.26
101-3020-422.30-02	03/01/2010	CLEANING SUPPLIES FIRE ST	072823	010944 10/2010 263.00
101-3020-422.28-04	04/10/2010	TYRA HIDALGO TRAINING	04102010	010944 10/2010 360.00
06/11/2010	71083	VORTEX INDUSTRIES, INC.	786	1,447.02
101-1910-419.21-04	05/04/2010	REPAIR HOLDING RM DOOR	11-532238-1	010127 11/2010 595.13
101-1910-419.21-04	04/19/2010	REPAIR OVERHEAD SEC DOOR	11-529555-1	010127 10/2010 476.94
101-1910-419.21-04	03/09/2010	MAIT 3 ROLLING STEEL DRS	11-522192-1	010127 10/2010 374.95
06/11/2010	71084	DKC ASSOCIATES, INC.	2187	3,200.00
101-1110-412.20-06	06/03/2010	PROFESIONAL SVCS	194	010782 12/2010 1,065.60
405-1260-413.20-06	06/03/2010	PROFESIONAL SVCS	194	010782 12/2010 1,065.60
502-1922-419.20-06	06/03/2010	PROFESIONAL SVCS	194	010782 12/2010 1,068.80

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06/11/2010	71085	DLA PRINTING & PROMO'S	1178				173.26
101-1210-413.28-11	04/08/2010	AP CHECKS VOUCHERS	6525	010538	11/2010		173.26
06/11/2010	71086	ONE SOURCE DISTRIBUTORS	1071				2,583.23
101-6040-454.30-02	04/05/2010	NV BAGA W/STAMPED STEEL	S3271647.001	010899	11/2010		2,583.23
06/11/2010	71087	VISUAL ASYLUM	1757				1,500.00
405-1260-413.20-06	04/29/2010	DESIGN IB OPEN BUS FOLDER	10-017-T	011164	11/2010		1,500.00
06/17/2010	71088	ACCOUNTEMP	70				5,604.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 03/05/10	30791592		12/2010		960.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 03/12/10	30839393		12/2010		888.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 04/16/10	31022334		12/2010		876.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 04/23/2010	31037730		12/2010		960.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 05/07/2010	31110798		12/2010		960.00
101-1210-413.21-01	06/16/2010	DIAZ, E W/E 05/14/10	31148423		12/2010		960.00
06/17/2010	71089	AFFORDABLE PRINTER CARE	116				81.51
101-1230-413.30-01	05/27/2010	TONER FOR HP 4050 PRINTER	65924	F01121	11/2010		81.51
06/17/2010	71090	AGRICULTURAL PEST CONTROL	123				95.00
101-1910-419.21-04	05/25/2010	MAY 2010	218407	010126	11/2010		95.00
06/17/2010	71091	ARROWHEAD MOUNTAIN SPRING WATE	1340				178.27
101-5020-432.30-02	05/22/2010	MAY 2010	00E0026726646	010046	11/2010		98.12
101-1010-411.30-02	05/22/2010	WATER/BREAK RM	00E0025324922	010037	11/2010		80.15
06/17/2010	71092	ASBURY ENVIRONMENTAL SERVICES	277				30.00
501-1921-419.29-04	05/21/2010	USED ANTI-FREEZE PICKUP	130336113	010059	11/2010		30.00
06/17/2010	71093	AZTEC LANDSCAPING INC	310				1,540.00
101-5010-431.21-04	05/31/2010	MAY 2010	0020630-IN	010790	11/2010		1,540.00
06/17/2010	71094	BARRETT ENGINEERED PUMPS	356				489.23
601-5060-436.21-04	06/02/2010	LABOR	071412	010114	12/2010		300.00
601-5060-436.28-01	04/30/2010	WEAR PLATE ASSY	071017	010114	11/2010		189.23
06/17/2010	71095	CALIF ELECTRIC SUPPLY	609				631.61
101-5010-431.21-23	05/19/2010	2 BACKSHIELDS	1069-603820	010082	11/2010		225.84
101-6040-454.30-02	05/20/2010	LENS/GASKET	1069-605892	010082	11/2010		120.21
101-5010-431.21-23	06/02/2010	WIRE/CONNECTORS/LINE	1069-607113	010082	12/2010		285.56
06/17/2010	71096	CALIFORNIA ENV CONTROLS INC	642				827.31
601-5060-436.28-01	05/19/2010	FLANGED SPOOL	2162	010105	11/2010		827.31
06/17/2010	71097	CDW GOVERNMENT INC	725				2,579.55
101-1230-413.50-04	06/03/2010	SCANNER FOR COMDEV	SVR4276	011151	12/2010		263.72
101-3040-424.50-04	06/03/2010	SCANNER FOR COMDEV	SVR4276	011151	12/2010		263.72
101-3070-427.50-04	06/03/2010	SCANNER FOR COMDEV	SVR4276	011151	12/2010		263.72

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101-3080-428.50-04	06/03/2010	SCANNER FOR COMDEV	SVR4276	011151 12/2010 1,054.87
405-1260-413.50-04	06/03/2010	SCANNER FOR COMDEV	SVR4276	011151 12/2010 263.72
503-1923-519.30-22	06/03/2010	HP LJ INPUT TRAY	SVN1537	011153 12/2010 313.20
503-1923-519.30-22	06/01/2010	PI RECIEPTS	STZ4190	011091 12/2010 156.60
06/17/2010	71098	CLEAN HARBORS	913	
101-5040-434.21-04	06/04/2010	MAY 2010	6Y1083633	010121 12/2010 1,939.20
06/17/2010	71099	COAST RECREATION INC	935	
101-6040-454.30-02	06/03/2010	OFFSET RAIL HGR CLAMP ASY	8120	011168 12/2010 190.00
06/17/2010	71100	COMMERCIAL LANDSCAPE SUPPLY	944	
501-1921-419.28-16	06/03/2010	LANDSCAPE ITEMS	167478	010061 12/2010 99.61
06/17/2010	71101	COX COMMUNICATIONS	1073	
601-5050-436.21-04	05/31/2010	LIFEGUARD MAY SVC	2328	010139 11/2010 179.00
101-6010-451.29-04	06/10/2010	3110015531401 06/13-07/12	07-04-2010	010139 12/2010 125.12
06/17/2010	71102	DUNN EDWARDS CORPORATION	1197	
405-5030-433.30-02	05/20/2010	PAINT	2069014824	010129 11/2010 384.08
06/17/2010	71103	EBERHARD BENTON ROOFING	1745	
248-1920-519.20-06	05/24/2010	CLEAN & GREEN	11827-01	011159 11/2010 9,477.00
06/17/2010	71104	EDAW, INC	1804	
405-1260-513.20-06	05/21/2010	APRIL 2010	1457037	080317 11/2010 341.75
06/17/2010	71105	FASTENAL	909	
101-6040-454.30-02	05/20/2010	RECOIL INSERTS	CACHU22126	010062 11/2010 8.96
06/17/2010	71106	GO-STAFF, INC.	2031	
101-3040-424.21-01	06/01/2010	FERNANDEZ, A W/E 05/30/10	72147	010705 12/2010 1,260.00
101-3020-422.21-01	06/01/2010	ROCHER, JOCELYN	72147	010419 12/2010 240.00
101-3040-424.21-01	06/08/2010	TEMP/FERNANDEZ	72379	010705 12/2010 300.00
101-3020-422.21-01	05/18/2010	ROCHER, JOCELYNE	71700	010705 12/2010 60.00
101-3020-422.21-01	05/25/2010	ROCHER, JOCELYNE	71926	010419 11/2010 240.00
101-3040-424.21-01	06/15/2010	FERNANDEZ, A W/E 06/13/10	72593	010419 11/2010 180.00
06/17/2010	71107	GOOGLE, INC.	2009	
503-1923-419.20-06	06/05/2010	MAY 2010	1339202	010226 12/2010 280.00
06/17/2010	71108	GTC SYSTEMS INC	1910	
503-1923-419.21-04	06/03/2010	IT PROF CONST SVCS	30207	010874 12/2010 3,525.63
503-1923-419.21-04	06/02/2010	CISCO IPS SVC ONSITE	30244	011154 12/2010 1,400.00
503-1923-419.21-04	05/28/2010	PROF IT CONSULT	30206	011077 11/2010 1,365.63
06/17/2010	71109	LEHIGH HANSON	48	
101-1920-532.20-06	05/24/2010	VETERANS PARK MAIT	492335	010124 11/2010 583.82
06/17/2010	71110	HARLAN CONSTRUCTION	2074	
248-1920-519.20-06	06/01/2010	CLAN & GREEN 1311 5TH ST	06-01-2010	011163 12/2010 11,138.98

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06/17/2010 248-1920-519.20-06	71111 05/24/2010	HELIOPOWER INC. CLEAN & GREEN DEPOSIT	2056 83040	011158 11/2010	1,000.00 1,000.00
06/17/2010 210-1235-586.29-09	71112 06/03/2010	HESS SURVEY SKATE CURB	2241 1512	011156 12/2010	1,737.50 1,737.50
06/17/2010 101-1210-413.28-11	71113 04/01/2010	JET GRAPHICS, INC. BL PAPER	2022 105558-C	010906 11/2010	531.58 531.58
06/17/2010 101-6020-452.30-02 101-6020-452.30-02	71114 05/18/2010 05/26/2010	JOHN DEERE LANDSCAPES DIA ASSY EASY REACH/TIE DOWNS	1986 54494928 54616189	010128 11/2010 010128 11/2010	348.06 173.70 174.36
06/17/2010 101-1910-419.30-02 101-6020-452.30-02 501-1921-419.30-02	71115 06/03/2010 06/03/2010 06/03/2010	LIGHTHOUSE, INC LED TRAFFIC ADVISOR LED TRAFFIC ADVISOR LED TRAFFIC ADVISOR	787 0001606 0001606 0001606	010094 12/2010 010094 12/2010 010094 12/2010	471.14 199.00 232.14 40.00
06/17/2010 101-1020-411.21-06	71116 05/24/2010	MARTIN & CHAPMAN COMPANY ELECTIONS	912 210224	F01122 11/2010	34.19 34.19
06/17/2010 101-1020-411.29-04 101-5010-531.20-06 405-1260-513.20-06 601-5060-436.20-06 601-5060-536.20-06	71117 06/01/2010 06/01/2010 06/01/2010 06/01/2010 06/01/2010	MICHAL PIASECKI CONSULTING MAY 2010 PW MAY 2010 PW MAY 2010 PW MAY 2010 PW MAY 2010 PW	1795 138 138 138 138 138	010074 12/2010 010074 12/2010 010074 12/2010 010074 12/2010 010074 12/2010	6,300.00 135.00 135.00 5,715.00 135.00 180.00
06/17/2010 101-1920-532.20-06	71118 05/30/2010	MIRELES LANDSCAPING JANITOR/LANDSCAPE	2107 0449	010701 11/2010	900.00 900.00
06/17/2010 101-5020-432.30-01 101-5020-432.30-01 101-1210-413.30-01 101-5020-432.30-01	71119 05/20/2010 05/21/2010 05/25/2010 05/28/2010	OFFICE DEPOT, INC BUSINESS CARD PAPER CORK/BULLETIN BOARDS FOOT REST/FILE SORTERS OFFICE SUPPLIES	1262 519796379001 519912981001 520313913001 520752503001	010413 11/2010 010413 11/2010 010413 11/2010 010413 11/2010	231.94 10.70 141.84 42.61 36.79
06/17/2010 101-6040-454.30-02	71120 05/28/2010	PADRE JANITORIAL SUPPLIES JANITORIAL SUPPLIES	1430 302556	010080 11/2010	107.88 107.88
06/17/2010 101-6040-454.21-04	71121 05/19/2010	PARTNERSHIP WITH INDUSTRY P/E - 05/15/2010	1302 GS02861	010050 11/2010	1,081.76 1,081.76
06/17/2010 101-5010-431.21-23	71122 05/27/2010	PERVO PAINT CO. SWIVEL GUN EXTN/SPRAY TIP	8 18269	010083 11/2010	124.85 124.85
06/17/2010 101-1920-419.28-09 101-1920-419.28-09	71123 06/06/2010 06/06/2010	PITNEY BOWES(PURCHASE POWER) MAILING MACHINE POSTAGE MAILING MACHINE POSTAGE	1369 06-06-2010 06-06-2010	010311 12/2010 011069 12/2010	4,018.99 1,973.99 2,045.00

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06/17/2010	71124	PMI	23	213.76
101-6040-454.30-02	06/07/2010	DIAMOND GRIP LARGE	0233206	010068 12/2010 213.76
06/17/2010	71125	PRAXAIR DISTRIBUTION INC	1652	88.84
101-6040-454.28-01	05/28/2010	GRINDING WHEELS	36637668	010116 11/2010 88.84
06/17/2010	71126	PRUDENTIAL OVERALL SUPPLY	72	835.23
101-5020-432.25-03	05/19/2010	05/19/10 PW UNIFORMS	30099653	010049 11/2010 208.99
101-5020-432.25-03	05/26/2010	05/26/10 PW UNIFORMS	30101273	010049 11/2010 231.55
101-5020-432.25-03	06/02/2010	06/02/10 PW UNIFORMS	30102874	010049 12/2010 201.58
101-5020-432.25-03	06/09/2010	06/09/10 PW UNIFORMS	30104489	010049 12/2010 193.11
06/17/2010	71127	QWIK PRINTS	1622	40.00
101-1130-412.21-04	06/01/2010	LIVE SCAN/NEW EMP	101521833	010040 12/2010 40.00
06/17/2010	71128	R.W. LITTLE CO.	86	1,250.00
101-6040-454.28-01	05/19/2010	SANDBLASTING	97145	010541 11/2010 1,250.00
06/17/2010	71129	SAM & SONS PLUMBING	1981	7,400.00
248-1920-519.20-06	05/28/2010	1311 5TH ST, CLEAN&GRN	1633	011162 11/2010 3,600.00
248-1920-519.20-06	06/08/2010	CLEAN&GREEN-1258 11TH ST	1678	011172 12/2010 3,800.00
06/17/2010	71130	SKS INC.	412	6,800.72
501-1921-419.28-15	06/03/2010	1200 GAL GASOLINE	1233489-IN	010101 12/2010 3,404.94
501-1921-419.28-15	06/10/2010	100.8 G REG/211.4 G DIESE	1233615-IN	010101 12/2010 3,395.78
06/17/2010	71131	SOUTH WEST SIGNAL	488	160.00
101-5010-431.21-04	05/31/2010	MAY SIGNAL MAIT	49894	010086 11/2010 160.00
06/17/2010	71132	SWC - CROWN COVE AQUATIC CENTE	1595	195.00
101-5020-432.28-04	05/17/2010	PW CPR TRAINING- 2010	CCAC051110	F01117 11/2010 48.00
101-5020-432.28-04	05/17/2010	PW CPR TRAINING- 2010	CCAC051010	F01118 11/2010 75.00
101-5020-432.28-04	05/17/2010	PW CPR TRAINING - 2010	CCAC051210	F01119 11/2010 72.00
06/17/2010	71133	STAPLES ADVANTAGE	2114	35.66
101-5020-432.30-01	05/20/2010	OFFICE SUPPLIES- PENS AND	102444097	F01124 11/2010 35.66
06/17/2010	71134	THYSSENKRUPP ELEVATOR	663	219.65
101-3030-423.20-06	06/01/2010	JUNE 2010	1037049599	010043 12/2010 219.65
06/17/2010	71135	TRAFFIC CONTROL SERVICE INC.	684	220.42
101-5010-431.21-23	05/26/2010	CAL TRANS BLACK	975363	010077 11/2010 220.42
06/17/2010	71136	UNDERGROUND SERVICE ALERT OF	731	25.50
601-5060-436.21-04	06/01/2010	MAY 2010	520100299	010008 12/2010 25.50
06/17/2010	71137	UNION TRIBUNE	738	1,250.00
101-1130-412.28-07	03/01/2010	FEB 2010 AD AGRMNT	171046	011061 11/2010 625.00
101-1130-412.28-07	05/03/2010	APRIL 2010 AD AGRMNT	179714	011061 11/2010 625.00

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06/17/2010	71138	WESTERN PUMP INC	752			157.62	
501-1921-419.28-13	05/31/2010	SEALS & LABOR/GAS PUMPS	0088597-IN	010100	11/2010	232.62	
501-1921-419.28-13	06/07/2010	CREDIT FOR CALIBRATION	0088597-CM	010100	11/2010	75.00-	
06/17/2010	71139	XEROX CORPORATION	861			1,129.98	
101-1920-419.20-17	06/01/2010	MAY 2010 CITY HALL	048246776	010229	12/2010	797.67	
101-3030-423.20-06	06/03/2010	LIFEGUARD MAY COPIER FEES	048405782	010229	12/2010	332.31	
06/17/2010	71140	ZUMAR INDUSTRIED INC.	875			43.50	
101-1910-419.30-02	06/03/2010	PARKING SIGNS	0122542	010070	12/2010	43.50	
06/17/2010	71141	AFFORDABLE RAINGUTTERS	2232			4,999.00	
504-1924-519.20-06	05/26/2010	GUTTERS/DWN SPOUTS	15490	011081	11/2010	4,999.00	
06/25/2010	71142	AFLAC	120			882.28	
101-0000-209.01-13	06/10/2010	PR AP PPE 6/3/10	20100610		12/2010	441.14	
101-0000-209.01-13	06/24/2010	PR AP PPE 6/17/10	20100624		12/2010	441.14	
06/25/2010	71143	AK & COMPANY	1640			2,000.00	
101-1210-413.20-06	06/04/2010	08/09 STATE MANDATED COST	I BEACH - NEW	011175	12/2010	2,000.00	
06/25/2010	71144	BARROWS CONSTRUCTION	2062			7,500.00	
248-1920-519.20-06	06/10/2010	CLEAN&GREEN-176 I B BLVD	06-10-2010	011179	12/2010	7,500.00	
06/25/2010	71145	BDS ENGINEERING INC	372			3,123.00	
101-0000-221.01-02	06/02/2010	MAY 2010 PLAN CHECK	10-02E		12/2010	1,758.00	
101-0000-221.01-02	06/02/2010	MAY 2010 PLAN CHECK	10-02E		12/2010	139.00	
101-0000-221.01-02	06/02/2010	MAY 2010 PLAN CHECK	10-02E		12/2010	198.00	
101-0000-221.01-02	06/02/2010	MAY 2010 PLAN CHECK	10-02E		12/2010	1,028.00	
06/25/2010	71146	BILLS HAPPY HAIR BARBER SHOP	1			16,106.00	
408-1920-519.20-06	06/21/2010	F&E OFFER/FIXED PYMNT	06-10-2010		12/2010	16,106.00	
06/25/2010	71147	CALIFORNIA COMMERCIAL ASPHALT	590			416.30	
101-5010-431.30-02	06/03/2010	EMULSION SS	93752	010085	12/2010	32.63	
101-5010-431.30-02	06/07/2010	MIRAMAR 1/2 TYPE III	93832	010085	12/2010	383.67	
06/25/2010	71148	RICARDO CANCINO	2203			5,411.00	
248-1920-519.20-06	06/21/2010	CLEAN&GREEN-1258 11TH ST	06-21-2010	011183	12/2010	5,411.00	
06/25/2010	71149	CDW GOVERNMENT INC	725			530.66	
503-1923-419.28-13	03/01/2010	SYG BE 2010 SRV	RWJ2890	011177	11/2010	530.66	
06/25/2010	71150	CITY OF CHULA VISTA	823			16,640.00	
101-3050-425.21-04	04/20/2010	MARCH 2010 A/C	AR128613		12/2010	16,640.00	
06/25/2010	71151	COLONIAL LIFE & ACCIDENT	941			266.88	
101-0000-209.01-13	06/10/2010	PR AP PPE 6/3/10	20100610		12/2010	133.44	
101-0000-209.01-13	06/24/2010	PR AP PPE 6/17/10	20100624		12/2010	133.44	

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06/25/2010	71152	COUNTY OF SAN DIEGO	1046			1,463.00	
501-1921-419.28-13	05/19/2010	06/30/2010-06/30/2011 GEN	HK01-120490		11/2010	1,463.00	
06/25/2010	71153	COUNTY OF SAN DIEGO	1055			2,829.00	
101-3010-421.21-04	06/17/2010	MAY 2010 PARKING PENALTY	05/10		12/2010	2,829.00	
06/25/2010	71154	D.A.R. CONTRACTORS	1122			694.00	
101-3050-425.20-06	06/01/2010	MAY 2010 DEAD ANIMAL REMO	0005059	010532	12/2010	347.00	
101-3050-425.20-06	05/03/2010	APRIL 2010 DEAD ANIMAL RE	0004059	010532	11/2010	347.00	
06/25/2010	71155	DANIEL VEGA	2			250.00	
101-0000-221.02-01	06/02/2010	JR LG TUITION REFUND	2010		12/2010	250.00	
06/25/2010	71156	DEAN S GOLDMAN	4			6,000.00	
101-0000-221.01-02	06/02/2010	BOND REFUND	MF 881		12/2010	6,000.00	
06/25/2010	71157	DEPARTMENT OF CORRECTIONS AND	169			9,054.54	
101-6020-452.21-04	06/10/2010	MARCH 2010	1800062564	010438	12/2010	3,704.13	
101-6020-452.21-04	06/10/2010	FEBRUARY 2010	1800062577	010438	12/2010	5,350.41	
06/25/2010	71158	DEPARTMENT OF JUSTICE	1154			96.00	
101-1130-412.21-04	06/07/2010	MAY 2010	794541	010038	12/2010	96.00	
06/25/2010	71159	DKC ASSOCIATES, INC.	2187			3,200.00	
101-1110-412.20-06	06/16/2010	06/03/10-06/16/10	195	010782	12/2010	1,065.60	
405-1260-413.20-06	06/16/2010	06/03/10-06/16/10	195	010782	12/2010	1,065.60	
502-1922-419.20-06	06/16/2010	06/03/10-06/16/10	195	010782	12/2010	1,068.80	
06/25/2010	71160	DONNOE & ASSOCIATES, INC	1185			1,115.00	
101-1130-412.20-06	05/20/2010	EMPLMNT EXAM RENTAL/BOOKS	3693	011157	11/2010	1,115.00	
06/25/2010	71161	EAGLE NEWSPAPER	1204			1,148.00	
405-1260-413.20-06	05/27/2010	CAL-AM WATER AD	56601	010989	11/2010	133.00	
101-5010-431.20-06	10/22/2009	ST RT 75 LANDSCAPE MAINT	51801	010079	11/2010	80.00	
101-5010-431.20-06	10/29/2009	ST RT 75 LANDSCAPE MAINT	51923	010079	11/2010	80.00	
101-5010-431.20-06	11/05/2009	BID ADS-SEWER MAINS/RT 75	52090	010079	11/2010	80.00	
601-5060-536.20-06	11/05/2009	BID ADS-SEWER MAINS/RT 75	52090	010079	11/2010	80.00	
601-5060-536.20-06	11/12/2009	BID ADS/SEWER MAINS	52221	010079	11/2010	80.00	
601-5060-536.20-06	11/19/2009	BID ADS/SEWER MAINS	52360	010079	11/2010	80.00	
601-5060-536.20-06	04/29/2010	WET WELLS BID AD	55963	010079	11/2010	80.00	
601-5060-536.20-06	05/06/2010	WET WELLS BID AD	56229	010079	11/2010	80.00	
601-5060-536.20-06	05/13/2010	WET WELLS BID AD	56355	010079	11/2010	80.00	
101-1020-411.28-07	05/13/2010	ORDINANCE ADVERTISING	56355	010407	11/2010	127.50	
101-1020-411.28-07	05/27/2010	ORDINANCE ADVERTISING	56601	010407	11/2010	87.50	
101-5010-431.20-06	10/15/2009	STATE RT 75 LANDSCAPE MNT	51661	010079	11/2010	80.00	
06/25/2010	71162	EDAW, INC	1804			1,395.00	
405-1260-513.20-06	06/14/2010	MAY 2010 IB MIXED USE ZON	1457038	080317	12/2010	1,395.00	
06/25/2010	71163	EPIC LAND SOLUTIONS, INC.	2105			9,853.47	
408-1920-519.20-06	05/31/2010	P/E 05/31/10 PALM RELOCAT	0510-0190	010328	11/2010	9,853.47	

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06/25/2010	71164	FEDERAL EXPRESS CORP.	911	31.14	
101-5020-432.28-09	05/28/2010	FED EX TRASPORTATION COST	7-105-22386	F01130 11/2010	31.14
06/25/2010	71165	GO-STAFF, INC.	2031	1,663.80	
101-3020-422.21-01	06/08/2010	ROCHER, J W/E 06/06/10	72379	010419 12/2010	240.00
101-3020-422.21-01	06/15/2010	ROCHER, J W/E 06/13/10	72593	010419 12/2010	240.00
601-5060-436.21-01	06/15/2010	REISENAUER, C W/E 6/13/10	72594	010889 12/2010	943.80
101-3040-424.21-01	06/22/2010	FERNANDEZ, A W/E06/20/10	72850	010705 12/2010	240.00
06/25/2010	71166	GRAINGER	1051	383.07	
101-1910-419.30-02	06/01/2010	BALLAST ELECTRONIC	9265499351	010076 12/2010	45.51
101-1910-419.30-02	06/14/2010	BALLAST/PAINT/WORK GLOVES	9275816719	010076 12/2010	291.79
101-1910-419.30-02	06/15/2010	GLOVES	9276637007	010076 12/2010	45.77
06/25/2010	71167	I B FIREFIGHTERS ASSOCIATION	214	216.50	
101-0000-209.01-08	06/24/2010	PR AP PPE 6/17/10	20100624	12/2010	216.50
06/25/2010	71168	ICMA RETIREMENT TRUST 457	242	5,265.12	
101-0000-209.01-10	06/24/2010	PR AP PPE 6/17/10	20100624	12/2010	5,265.12
06/25/2010	71169	INTERSTATE BATTERY OF SAN DIEG	388	93.43	
501-1921-419.28-16	06/02/2010	MTP-24F BATTERY	649005384	010063 12/2010	93.43
06/25/2010	71170	JUNE ENGEL	2213	115.50	
405-1260-413.28-11	06/07/2010	REIMBURSE PRINTING COSTS	9932	12/2010	32.08
405-1260-413.28-11	06/04/2010	REIMBURSE PRINTING COSTS	9653	12/2010	57.75
405-1260-413.28-11	06/03/2010	REIMBURSE PRINTING COSTS	9465	12/2010	25.67
06/25/2010	71171	KANE, BALLMER & BERKMAN	1828	1,770.00	
245-1240-413.20-06	06/01/2010	MAY 2010 AMERICAN LEGION-	15316	12/2010	50.00
101-0000-221.01-02	06/01/2010	MAY 2010 SEACOAST INN OPA	15317	12/2010	1,720.00
06/25/2010	71172	KELLY PAPER	2246	391.50	
101-5020-432.30-01	02/11/2010	COPY PAPER	3168082	011178 11/2010	193.85
408-5020-432.30-01	02/11/2010	COPY PAPER	3168082	011178 11/2010	197.65
06/25/2010	71173	KIM A MIKHAEL	1680	520.00	
101-3010-421.20-06	06/06/2010	PK ADMIN HRNGS 4/19 & 6/2	06-06-2010	011167 12/2010	250.00
101-3070-427.20-06	06/06/2010	04/19/10 & 06/02/10 HRNGS	06-06-2010	011174 12/2010	270.00
06/25/2010	71174	KOA CORPORATION	611	920.00	
101-3020-422.20-06	04/30/2010	MAR/APR 2010 IB AS NEEDED	J99475XX69	12/2010	920.00
06/25/2010	71175	LIGHTHOUSE, INC	787	8.86	
501-1921-419.28-16	06/15/2010	CIRCUIT BREAKER/BULB	0005727	010094 12/2010	8.86
06/25/2010	71176	LLOYD PEST CONTROL	814	286.00	
101-1910-419.20-22	05/13/2010	MAY 2010 CITY HALL	2645661	010013 11/2010	31.00
101-1910-419.20-22	05/13/2010	MAY 2010 FIRE DEPT	2645662	010013 11/2010	31.00

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
101-1910-419.20-22	05/13/2010	MAY 2010 SHERIFF DEPT	2645886	010013	11/2010	31.00	
101-1910-419.20-22	05/14/2010	MAY 2010 MARINA VISTA	2645970	010013	11/2010	47.00	
101-1910-419.20-22	05/18/2010	MAY 2010 PUBLIC WORKS	2632775	010013	11/2010	47.00	
101-1910-419.20-22	05/19/2010	MAY 2010 DEMPSEY CTR	2633177	010013	11/2010	54.00	
101-1910-419.20-22	05/24/2010	MAY 2010 SPORTS PARK	2630376	010013	11/2010	45.00	
06/25/2010	71177	MPC OUTLET	2157			1,054.88	
503-1923-519.30-22	05/20/2010	HP JETDIRECT	148693	011087	11/2010	1,054.88	
06/25/2010	71178	AVI SYSTEMS	1668			4,539.02	
101-1920-419.21-04	05/31/2010	EOC/CNCL CHMBSR-CMRA/MIC	32026700	010909	11/2010	4,539.02	
06/25/2010	71179	OLLIE ANGEL SKATE SHOP	1			5,415.47	
408-1920-519.20-06	05/12/2010	TENANT IMPROVEMENT REIMBU	15-12-2010		12/2010	541.68	
408-1920-519.20-06	06/21/2010	RE-ESTABLISHMENT, PARTIAL	06-21-2010		12/2010	4,873.79	
06/25/2010	71180	PACIFIC REALTY	2			120.00	
101-0000-321.72-10	06/22/2010	OL REFUNDS	0001186		12/2010	40.00	
101-0000-323.71-03	06/22/2010	OL REFUNDS	0001186		12/2010	10.00	
101-0000-323.71-03	06/22/2010	OL REFUNDS	0001186		12/2010	50.00	
101-0000-321.72-10	06/22/2010	OL REFUNDS	0001186		12/2010	20.00	
06/25/2010	71181	PADRE JANITORIAL SUPPLIES	1430			621.96	
501-1921-419.30-02	06/11/2010	WINDSHIELD TOWEL	303172	010080	12/2010	113.88	
101-6040-454.30-02	06/04/2010	DISINFECTANT/SOAP	302841	010080	12/2010	66.99	
101-6040-454.30-02	06/15/2010	DISINFECTANT/SOAP/CLEAN B	303241	010080	12/2010	441.09	
06/25/2010	71182	PRAXAIR DISTRIBUTION INC	1652			105.24	
101-3020-422.30-02	04/15/2010	BREATHING AIR	36203481	010534	11/2010	105.24	
06/25/2010	71183	PROTECTION DESIGN & CONSULTING	1			75.00	
101-3040-424.28-04	06/17/2010	ADAME, RAPEL TRNG REG	07-08-2010		12/2010	75.00	
06/25/2010	71184	RANCHO AUTO & TRUCK PARTS	1685			76.95	
501-1921-419.28-16	05/28/2010	OIL FILTERS STOCK	7693-32110	010072	11/2010	12.46	
501-1921-419.30-02	06/11/2010	SPRK PLG	7693-33773	010072	12/2010	7.79	
501-1921-419.28-15	06/01/2010	MOTOR OIL	7693-32396	010072	12/2010	25.97	
501-1921-419.28-16	06/11/2010	OIL FILTERS	7693-33847	010072	12/2010	11.34	
501-1921-419.28-16	06/16/2010	A/T FILTER KIT #630	7693-34321	010072	12/2010	19.39	
06/25/2010	71185	SAFTEY KLEEN SYSTEMS	246			247.15	
501-1921-419.29-04	04/08/2010	NODEL 26 W/STAND 6317	50369697	010099	11/2010	247.15	
06/25/2010	71186	SAN DIEGO COUNTY SHERIFF	882			1,315,541.81	
101-3010-421.20-06	04/09/2010	FEBRUARY 2010 LAW ENF SVC	04-09-2010		12/2010	424,916.91	
212-3036-421.20-06	04/09/2010	FEBRUARY 2010 SPO W/B&W	04-09-2010		12/2010	15,549.00	
101-0000-338.60-03	04/09/2010	FEBRUARY 2010 TOW FEE CR	04-09-2010		12/2010	1,317.75-	
101-3010-421.20-06	04/20/2010	MARCH 2010 LAW ENF SVCS	04-20-2010		12/2010	423,304.09	
212-3036-421.20-06	04/20/2010	MARCH 2010 SPO W/B&W	04-20-2010		12/2010	15,549.00	
101-0000-338.60-03	04/20/2010	MARCH 2010 TOW FEE CREDIT	04-20-2010		12/2010	896.07-	

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR TRN AMOUNT
101-3010-421.20-06	04/09/2010	APRIL 2010 LAW ENF SVCS	05-25-2010	12/2010 423,841.70
212-3036-421.20-06	05/25/2010	APRIL 2010 SPO W/B&W	05-25-2010	12/2010 15,549.00
101-0000-338.60-03	05/25/2010	APRIL 2010 TOW FEE CREDIT	05-25-2010	12/2010 954.07-
06/25/2010	71187	SEIU LOCAL 221	1821	1,586.00
101-0000-209.01-08	06/24/2010	PR AP PPE 6/17/10	20100624	12/2010 1,586.00
06/25/2010	71188	SOUTH COUNTY ECONOMIC	484	550.00
101-0000-221.01-03	05/06/2010	REFUND DEPOSIT	6907	12/2010 550.00
06/25/2010	71189	SWC - CROWN COVE AQUATIC CENTE	1595	10.00
101-5020-432.28-04	06/08/2010	PAYMENT FOR REPRINTED CPR	CCAC060810	F01128 12/2010 10.00
06/25/2010	71190	STANFORD SIGN & AWNING	1532	8,262.50
408-1920-519.20-06	06/16/2010	629-641 9TH ST-FACADE IMP	10197	011182 12/2010 8,262.50
06/25/2010	71191	TRI-STATE SEMINAR	695	170.00
101-5020-432.28-04	06/10/2010	RAMOS, JOSE/CASAS, MANUEL	2010	12/2010 170.00
06/25/2010	71192	UNION TRIBUNE	738	1,250.00
101-1130-412.28-07	02/01/2010	JANUARY 2010 AD AGRMNT	165544	011061 11/2010 625.00
101-1130-412.28-07	04/01/2010	MARCH 2010 AD AGRMNT	176068	011061 11/2010 625.00
06/25/2010	71193	WAXIE SANITARY SUPPLY	802	1,618.04
101-6040-454.30-02	06/04/2010	TISSUE/LINER/SCOTCH-BRITE	71992865	010069 12/2010 600.87
101-6020-452.30-02	06/15/2010	LINERS/TOWELS/TISSUE	72011498	010069 12/2010 434.43
101-6040-454.30-02	06/15/2010	LINERS/TOWELS/TISSUE	72011498	010069 12/2010 578.18
101-6040-454.30-02	06/17/2010	8 OZ BOTTLE	72015410	010069 12/2010 4.56
06/25/2010	71194	WEST GROUP CTR	826	120.36
101-1020-411.28-14	06/01/2010	MAY 2010	820673525	010317 12/2010 120.36
06/25/2010	71195	WHITE CAP CONSTRUCTION SUPPLY	1434	323.05
101-5010-431.30-02	06/09/2010	ELECTRONIC LEVEL STABILA	15041582	010071 12/2010 323.05
06/25/2010	71196	ZUMAR INDUSTRIED INC.	875	176.18
101-5010-431.21-23	04/09/2010	D/C 3930 HIP WHITE 2"	0121378	010070 11/2010 176.18
06/25/2010	71197	ALLIANT INSURANCE SERVICES	1193	2,440.40
101-0000-209.01-13	05/27/2010	PR AP PPE 5/20/2010	20100527	11/2010 423.65
101-0000-209.01-14	05/27/2010	PR AP PPE 5/20/2010	20100527	11/2010 478.34
101-0000-209.01-13	06/10/2010	PR AP PPE 6/3/10	20100610	12/2010 426.65
101-0000-209.01-14	06/10/2010	PR AP PPE 6/3/10	20100610	12/2010 478.34
101-1010-411.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 19.36
101-1020-411.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 34.44
101-1110-412.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 66.04
101-1130-412.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 20.54
101-1210-413.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 48.66
101-1230-413.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 23.70
101-3070-427.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010	12/2010 .63

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-3080-428.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	.63
101-1910-419.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	6.32
101-3010-421.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	11.00
101-3020-422.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	44.68
101-3030-423.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	38.49
101-3040-424.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	22.12
101-3050-425.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	3.16
101-5020-432.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	50.56
101-5010-431.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	12.64
101-5040-434.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	3.93
101-6020-452.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	6.32
101-6010-451.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	3.16
101-6040-454.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	12.64
245-1240-413.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	6.32
405-1260-413.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	121.42
405-5030-433.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	6.32
601-5060-436.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	15.80
601-5050-436.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	17.00
501-1921-419.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	6.32
502-1922-419.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	7.43
503-1923-419.11-04	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	20.79
101-0000-209.01-13	05/01/2010	JUN 10 DISABILITY/LIFE/	06-01-2010		12/2010	3.00
06/25/2010	71198	PREFERRED BENEFIT INS ADMIN IN	37			2,336.48
101-0000-209.01-12	05/27/2010	PR AP PPE 5/20/2010	20100527		11/2010	1,168.10
101-0000-209.01-12	06/10/2010	PR AP PPE 6/3/10	20100610		12/2010	1,168.10
101-0000-209.01-12	06/01/2010	JUNE 2010	CP10954		12/2010	.28
06/25/2010	71199	VISION PLAN OF AMERICA	785			198.68
101-0000-209.01-18	05/27/2010	PR AP PPE 5/20/2010	20100527		11/2010	94.40
101-0000-209.01-18	06/10/2010	PR AP PPE 6/3/10	20100610		12/2010	94.40
101-0000-209.01-18	06/01/2010	JULY 2010	06-01-2010		12/2010	.12-
101-1920-419.29-04	06/01/2010	JULY 2010	06-01-2010		12/2010	10.00
DATE RANGE TOTAL *						1,598,970.02 *





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY BROWN, CITY MANAGER  
**MEETING DATE:** July 7, 2010  
**ORIGINATING DEPT.:** FINANCE DEPARTMENT *MM<sup>2</sup>*  
**SUBJECT:** SALE OF SURPLUS PROPERTY

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**BACKGROUND:**

From time to time, Staff determines the need to dispose of obsolete and surplus property. I.B.M.C. Chapter 3.04.050 states:

“The purchasing officer shall have the following powers and duties:

...J. To recommend to the city manager the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for city use;”

City of Imperial Beach Resolution 90-3828 authorized the Finance Director to participate in periodic sales of surplus property by the San Diego County Division of Purchasing and Contracting.

**DISCUSSION:**

At this time, the City of Imperial Beach has accumulated a number of equipment items that are recommended for transfer to a surplus or unused supplies and equipment category. The following supplies and equipment are recommended for this designation:

1. The items listed in Exhibit “A”.

**FISCAL ANALYSIS:**

Salvage Value

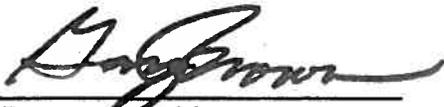
**DEPARTMENT RECOMMENDATION:**

Staff recommends approval of the attached Resolution authorizing the sale / transfer of surplus property as follows:

1. Items listed in Exhibit A, Equipment Inventory List for County Auction

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.



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Gary Brown, City Manager

**Attachments:**

1. Resolution 2010-6913
2. Exhibit A – Equipment Inventory List for County Auction

**RESOLUTION NO. 2010-6913**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING THE SALE OF CERTAIN SURPLUS CITY EQUIPMENT**

**WHEREAS**, I.B.M.C. Chapter 3.04.050 states: "The purchasing officer shall have the following powers and duties:

...J. To recommend to the city manager the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for city use;" and

**WHEREAS**, the City Council of the City of Imperial Beach on October 3, 1990, adopted Resolution No. 90-3828 authorizing its Finance Director to participate in periodic sales of surplus property by the San Diego County Division of Purchasing and Contracting; and

**WHEREAS**, the City Council of the City of Imperial Beach now desires to declare the items of equipment shown on Exhibit "A" attached hereto as surplus or unsuitable for City use.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Imperial Beach that:

1. The above recitals are true and correct.
2. The City Council of the City of Imperial Beach declares the items of equipment shown on Exhibit "A" (attached hereto), surplus and/or unused and hereby directs the Finance Director to dispose of same as follows:
  - Items in Exhibit "A" through the San Diego County Division of Purchasing and Contracting or as otherwise authorized by the City Manager.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 7<sup>th</sup> day of July 2010, by the following roll call vote:

**AYES:            COUNCILMEMBERS:**  
**NOES:            COUNCILMEMBERS:**  
**ABSENT:        COUNCILMEMBERS:**

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

**ATTEST:**

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

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2010-6913 – A Resolution of the City Council of the City of Imperial Beach, California, AUTHORIZING THE SALE OF CERTAIN SURPLUS CITY EQUIPMENT.

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
DATE

**IMPERIAL BEACH  
EQUIPMENT INVENTORY LIST  
FOR COUNTY AUCTION**

<b>ITEM</b>	<b>QTY</b>	<b>DESCRIPTION</b>	<b>PROPERTY TAG #</b>
1.	1	Computer: 0035759854	1656
2.	1	“ 005759854	1657
3.	1	“ KR56OUT#ABA	---
4.	1	“ G2UJ451	1549
5.	1	“ 5WKJ451	1507
6.	1	“ EN27OUT#ABA	1646
7.	1	“ 7TKJ451	1506
8.	1	“ 0036816527	1659
9.	1	“ 0036599846	1626
10.	1	“ QE726L040001	---
11.	1	“ GTKJ451	1505
12.	1	“ D142FRY1K207	1157
13.	1	“ 1810B0008004	---
14.	1	“ 0029821286	1386
15.	1	“ 5VKJ451	1531
16.	1	“ 0035911000	1589
17.	1	“ 0035408530	1555
18.	1	“ CSKJ451	1527
19.	1	“ MXL85205KQ	---
20.	1	“ MXL6490VGG	---
21.	1	Video: MRB5650H09996	---
22.	1	“ MRB5650H09999	---
23.	1	“ MUL7007K0039105	---
24.	1	“ E172FPT	---
25.	1	“ EM885AA	---
26.	1	“ CNC725S5Z8	---
27.	1	“ CND7391Y6B	---
28.	1	“ CND713436Y	---
29.	1	“ ETL18091025	---
30.	1	“ MUL7007K00	---
31.	1	“ MW662BOH04269	---
32.	1	“ CX000445133046	---
33.	1	“ E172FTP	---
34.	1	Scanner: CT3X010339	---
35.	1	Router: JMX0838LDXT	---
36.	1	Switch: S4493811	---
37.	1	“ S4511382	1364
38.	1	Computer: MXL6490SL8	1632
39.	1	Printer: 3FV0065442	1221
40.	1	“ MX9881V10S	---
41.	1	“ JPGGN28810	A0042
42.	1	“ Q1319A	A0033

43.	1	Printer: USQF004375	---
44.	1	" JPTG013656	---
45.	1	" CNBJY07687	1662
46.	1	" CNBRK42415	---
47.	1	1999 Dodge 2500	3B6KC26Z2 XM542942





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** JULY 7, 2010  
**ORIGINATING DEPT.:** JACQUELINE M. HALD, CITY CLERK *JMH*

**SUBJECT:** RESOLUTION NO. 2010-6915 – RATIFYING AN AGREEMENT WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR PROMOTIONAL SERVICES AT THE 4<sup>TH</sup> OF JULY FIREWORKS SHOW IN CONJUNCTION WITH THE 10<sup>TH</sup> ANNUAL BIG BAY BOOM FIREWORKS SPECTACULAR

**BACKGROUND:**

Through the Port of San Diego's Financial Assistance Program, the Port of San Diego gives back to the community by supporting the many activities and organizations that make San Diego Bay a vibrant and thriving community. The goal of the Financial Assistance Program is to provide funding to its five member cities as well as other organizations that promote recreation, commerce, navigation and fisheries along the tidelands of San Diego Bay.

On November 4, 2009, the City Council of the City of Imperial Beach authorized the City Manager to execute and submit the 2010-2011 Port of San Diego Financial Assistance Program application for funding assistance in the amount of \$40,000 for the City of Imperial Beach to participate in the 10<sup>th</sup> Annual Big Bay Boom 4<sup>th</sup> of July Fireworks Show. The Port of San Diego Board of Commissioners authorized financial assistance in the amount of \$15,000. City staff has obtained sponsorships in the amount of \$26,000.

**DISCUSSION:**

On June 15, 2010, City Council approved an agreement with the Port of San Diego in order to receive the approved funding for the 10<sup>th</sup> Annual Big Bay Boom 4<sup>th</sup> of July Fireworks Show. This agreement was approved with revisions to Section 9.1 and to the Scope of Services – Attachment A. Upon further review, staff determined that the suggested revisions were no longer required. Therefore, it is necessary to ratify the agreement as it was originally submitted to the City by the Port.

**FISCAL ANALYSIS:**

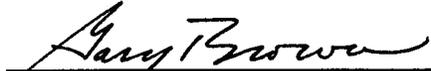
The cost estimate to participate in the 10th Annual Big Bay Boom 4th of July Fireworks Show is approximately \$42,000, with City Services estimated at an additional cost of \$3,600. Costs will be offset by the \$15,000 from the Port of San Diego and by sponsorship contributions.

**DEPARTMENT RECOMMENDATION:**

1. Adopt Resolution No. 2010-6915, ratifying an agreement with the San Diego Unified Port District in the amount of \$15,000 for promotional services at the 4<sup>th</sup> of July Fireworks Show in conjunction with the 10<sup>th</sup> Annual Big Bay Boom Fireworks Spectacular.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6915
2. Original text for Section 9.1 and Attachment A

**RESOLUTION NO. 2010-6915**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, RATIFYING AN AGREEMENT WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR PROMOTIONAL SERVICES AT THE 4TH OF JULY FIREWORKS SHOW IN CONJUNCTION WITH THE 10<sup>TH</sup> ANNUAL BIG BAY BOOM FIREWORKS SPECTACULAR**

**WHEREAS**, through the Port of San Diego's Financial Assistance Program, the Port of San Diego gives back to the community by supporting the many activities and organizations that make San Diego Bay a vibrant and thriving community; and

**WHEREAS**, the goal of the Financial Assistance Program is to provide funding to its five member cities as well as other organizations that promote recreation, commerce, navigation and fisheries along the tidelands of San Diego Bay; and

**WHEREAS**, on November 4, 2009, the City Council of the City of Imperial Beach authorized the City Manager to execute and submit the 2010-2011 Port of San Diego Financial Assistance Program application for funding assistance for the City of Imperial Beach to participate in the 10<sup>th</sup> Annual Big Bay Boom 4<sup>th</sup> of July Fireworks Show.

**WHEREAS**, on June 15, 2010, City Council approved an agreement with the Port of San Diego in order to receive the approved funding for the 10th Annual Big Bay Boom 4th of July Fireworks Show. This agreement was approved with revisions to Section 9.1 and to the Scope of Services – Attachment A. Upon further review, staff determined that the suggested revisions were no longer required. Therefore, it is necessary to ratify the agreement as it was originally submitted to the City by the Port.

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

1. The City Manager is authorized to enter into an agreement with the San Diego Unified Port District for promotional services at the 4<sup>th</sup> of July Fireworks Show in conjunction with the 10<sup>th</sup> Annual Big Bay Boom Fireworks Spectacular.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 7<sup>th</sup> day of July 2010, by the following vote:

**AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:**

---

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

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**JACQUELINE M. HALD, CMC  
CITY CLERK**



- 9.1 Duty to Indemnify, duty to defend and hold harmless:** To the fullest extent provided by law, City agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including City's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by City as provided for in this Agreement, or failure to act by City, its officers, agents, subcontractors and employees. The City's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- 9.2** The City further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.1, requires that City pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the City provided for in this Agreement.
- 9.3** The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of City provided for in this Agreement, City agrees to pay all reasonable attorneys' fees and all costs incurred by District.
- 10. INSURANCE REQUIREMENTS:** City shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

**ATTACHMENT A  
SCOPE OF SERVICES**

**San Diego Unified Port District**

City - through its program or event – will promote District and/or commerce, navigation, recreation, fisheries and tenant businesses on the District tidelands. This will be accomplished in the following manner:

- Conduct an event to view fireworks in conjunction with the Big Bay Boom Fireworks Spectacular on July 4, 2010 on the Imperial Beach oceanfront including at Portwood Pier Plaza
- In addition to the recognition for sponsorship received by the organizer of the fireworks barges - the Armed Forces YMCA – City will recognize District as a sponsor of the event through mention in the following City communications regarding the event:
  - City of Imperial Beach newsletter
  - City of Imperial Beach website
  - Promotions on the local government cable channel.

To ensure payment of City's invoice(s), City will forward to District proof that it provided the above-mentioned promotional services.



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** City Manager

**MEETING DATE:** JULY 7, 2010  
**ORIGINATING DEPT:** GARY BROWN, CITY MANAGER

**SUBJECT:** RESOLUTION NO. 2010-6909 – AUTHORIZING FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES TO SERVE AS PART-TIME ASSISTANT CITY MANAGER

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**BACKGROUND:**

The Assistant City Manager's position has been unfilled since Mr. Ritter's departure in June, 2009. The City has had two part-time Interim Assistant City Managers since that time. We entered into a contract with DKC Associates on January 21, 2010 so that Doug Clark could provide consulting services as the part-time Interim Assistant City Manager. This contract will expire on July 16, 2010.

**DISCUSSION:**

Though Department Heads and other staff have assumed part of Mr. Ritter's workload, I continue to believe that additional staff assistance is necessary to achieve Council's priorities. Since the original contract with DKC Associates is set to end on July 16, 2010, I request that a new contract be approved so that Mr. Clark can continue his work with the City. Doug's work hours will continue to average 20 hours a week, and the cost will be \$80 per hour which is less than the total hourly compensation received by Mr. Ritter. This new contract can be terminated without cause with 15 days notice by either party.

**ENVIRONMENTAL IMPACT:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

Funds are available due to not filling the Assistant City Manager position.

**CITY MANAGER'S RECOMMENDATION:**

Approve Resolution No. 2010-6909 authorizing a Professional Services Agreement with DKC Associates.

  
\_\_\_\_\_  
Gary Brown, City Manager

**Attachments:**

1. Resolution No. 2010-6909
2. First Amendment-Professional Services Agreement with DKC Associates



**RESOLUTION NO. 2010-6909**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES TO SERVE AS PART-TIME ASSISTANT CITY MANAGER**

**WHEREAS**, the position of Assistant City Manager (ACM) is unfilled; and

**WHEREAS**, the City Council and the City Manger believe it is worthwhile to use consultant services to perform the duties of the ACM on a part-time basis; and

**WHEREAS**, Mr. Doug Clark has the necessary background and skills to serve as the City's part-time ACM.

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

1. The above recitals are true and correct.
2. The City Manager is authorized to enter into a Professional Services Amended Agreement with DKC Associates; and

**BE IT FURTHER RESOLVED** that funds for this agreement shall come from funds already budgeted for the Assistant City Manager's position.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 7<sup>th</sup> day of July 2010, by the following vote:

**AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:**

---

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

---

**JACQUELINE M. HALD, CMC  
CITY CLERK**



**FIRST AMENDMENT- PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTANT SERVICES TO BE PROVIDED BY DKC ASSOCIATES**

THIS professional services agreement ("AGREEMENT") is made and entered into this day, July 19, 2010 by and between the CITY OF IMPERIAL BEACH, a municipal corporation ("CITY"), and DKC Associates, Incorporated ("CONSULTANT") (collectively "PARTIES").

**WHEREAS**, The CITY desires to employ a CONSULTANT to furnish general consulting services, management assistance, research, special studies, and other projects as assigned by the City Manager ("PROFESSIONAL SERVICES"); and

**WHEREAS**, The CITY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by CITY, and CONSULTANT is willing to perform such services; and

**WHEREAS**, CONSULTANT will conduct all the work as described and detailed in this AGREEMENT to be provided to the CITY.

**NOW, THEREFORE**, the PARTIES hereto mutually covenant and agree with each other as follows:

**1. PROFESSIONAL SERVICES.**

**1.1. Scope of Services.** The Consultant shall perform PROFESSIONAL SERVICES as set forth in the "Essential Duties and Responsibilities" and "Peripheral Duties" in the position description of the Assistant City Manager, Exhibit A. CITY shall provide CONSULTANT access to appropriate staff and resources for the coordination and completion of the projects under this AGREEMENT.

**1.2. Project Coordinator.** The City Manager is hereby designated as the Project Coordinator for CITY and will monitor the progress and execution of this AGREEMENT. CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this AGREEMENT for CONSULTANT. Douglas K. Clark is hereby designated as the Project Director for CONSULTANT.

**1.3 City Modification of Scope of Services.** CITY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT'S cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT'S compensation and/or contract time shall be made, subject to the CITY'S approval. All such changes shall be authorized in writing, executed by CONSULTANT and CITY.

## **2. DURATION OF AGREEMENT.**

**2.1 Term, Time for Performance.** This AGREEMENT shall commence on July 19, 2010 and continue until terminated by CITY or CONSULTANT with fifteen (15) days written notice. Specific work hours and site of work will be mutually agreed upon by the Consultant and City Manager. Some work will be done at the offices of DKC Associates when approved by the City Manager.

**2.2 Delay.** Any delay occasioned by causes beyond the control of CONSULTANT may merit an extension of time for the completion of the Scope of Services. When such delay occurs, CONSULTANT shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the PROFESSIONAL SERVICES when justified by the circumstances.

**2.3 City's Right to Terminate for Default.** Should CONSULTANT be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

**2.4 City's Right to Terminate without Cause.** Without limiting its rights in the event of CONSULTANT's default, CITY may terminate this AGREEMENT, without cause, by giving written notice to CONSULTANT. Such termination shall be effective 15 days after receipt of the written notice. CONSULTANT shall be compensated for all effort and material expended on behalf of CITY under the terms of this AGREEMENT, up to the effective date of termination. All personal property remaining in CITY facilities or on CITY property thirty (30) days after the expiration or termination of this AGREEMENT shall be, at CITY's election, considered the property of CITY.

## **3. COMPENSATION.**

**3.1. Hourly.** CONSULTANT shall bill the CITY \$80 per hour for work provided and shall present a written request for such payment on a bi-weekly basis. The Consultant will work an average of 20 hours per week or as mutually agreed by the PARTIES.

**3.2. Additional Services.** CITY may, as the need arises or in the event of an emergency, request additional services of CONSULTANT. Should such additional services be required, CITY and CONSULTANT shall agree to the cost prior to commencement of these services.

**4. INDEPENDENT CONTRACTOR.** CONSULTANT is, for all purposes arising out of this AGREEMENT, an independent contractor. The CONSULTANT has

and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder, the CITY only being concerned with the finished results of the work being performed. Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

**5. STATEMENT OF EXPERIENCE.** CONSULTANT agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent professional local government consulting firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. By executing this AGREEMENT, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the AGREEMENT in a manner satisfactory to CITY.

**6. AUDIT OF RECORDS.**

**6.1.** At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this AGREEMENT.

**6.2.** The CONSULTANT shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

**7. CONFIDENTIALITY.** All professional services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by the CITY, (b) subsequently becomes publicly known through no act or omission of CONSULTANT or (c) otherwise becomes known to CONSULTANT other than through disclosure by the CITY. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. The sole

purpose of this section is to prevent disclosure of CITY's confidential and proprietary information by CONSULTANT or subcontractors.

## **8. CONFLICTS OF INTEREST.**

**8.1.** CONSULTANT shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code § 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the CITY.

**8.2.** CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act. The CONSULTANT shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the CITY's determination that the CONSULTANT is subject to a conflict of interest code. The CONSULTANT shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the CONSULTANT was subject to a conflict of interest code.

**8.3.** If, in performing the PROFESSIONAL SERVICES set forth in this AGREEMENT, the CONSULTANT makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict of interest code, the CONSULTANT shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONSULTANT's relevant financial interests.

**9. OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this AGREEMENT shall be considered the property of CITY. CONSULTANT shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

## **10. INSURANCE**

**10.1.** CONSULTANT shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.

**10.2.** CONSULTANT's liabilities, including but not limited to CONSULTANT's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the CITY is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

**10.3. Types and Amounts Required.** CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT:

**10.3.1. Commercial General Liability (CGL).** Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$2 million** per occurrence and subject to an annual aggregate of **\$4 million**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**10.3.2. Commercial Automobile Liability.** For all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$1 million** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**10.4. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the CITY. At the option of the CITY, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**10.5. Additional Required Provisions.** The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

**10.5.1.** The CITY, its officers, officials, employees, and representatives shall be named as additional insureds. The CITY's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the CITY.

**10.5.2.** The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement which shall be submitted to the CITY.

**10.6. Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 5. The endorsement should be on forms provided by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

**11. INDEMNIFICATION.** CONSULTANT agrees to indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

**12. SUBCONTRACTORS.**

The CONSULTANT agrees that there will be no hiring or retaining of third parties (i.e. subcontractors) to perform services related to the PROJECT.

**13. NON-DISCRIMINATION.** CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual

with a disability. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

**14. NOTICES.** All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

Gary Brown, City Manager  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

Douglas K. Clark, President  
DKC Associates, Inc.  
3635 7<sup>th</sup> Ave - 6E  
San Diego, CA 92103  
(619) 501-4513,

**15. ASSIGNABILITY.** This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or sub-contracted, without the express written consent of the CITY.

**16. RESPONSIBILITY FOR EQUIPMENT.** CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

**17. CALIFORNIA LAW; VENUE.** This AGREEMENT shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this AGREEMENT shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

**18. COMPLIANCE WITH LAWS.** The CONSULTANT shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this AGREEMENT.

**19. ENTIRE AGREEMENT.** This AGREEMENT sets forth the entire understanding of the PARTIES with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or conditions of this AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

**20. NO WAIVER.** No failure of either the CITY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this AGREEMENT, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this AGREEMENT shall constitute a waiver of any such breach of such covenant, term or condition.

**21. SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision unenforceable, invalid, or illegal.

**22. DRAFTING AMBIGUITIES.** The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

**23. CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Exhibits, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

**24. EXHIBITS INCORPORATED.** All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

**25. SIGNING AUTHORITY.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.

(Signatures follow on next page)

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

CITY of IMPERIAL BEACH,  
a municipal corporation

DKC ASSOCIATES  
a \_\_\_\_\_ corporation

\_\_\_\_\_  
Gary Brown, City Manager

By: \_\_\_\_\_  
Douglas K. Clark , President

ATTEST:

\_\_\_\_\_  
Jacqueline Hald, City Clerk

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Gary Brown, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
James P. Lough, City Attorney

## EXHIBIT A

### *City of Imperial Beach* Position Description

Title:	Assistant City Manager	Job Number:	2020
Department:	City Manager	Workers' Comp Number:	8810
Division:	Executive Management	Employee Labor Group:	None/Management
Location:	City of Imperial Beach		

#### GENERAL PURPOSE

Under administrative direction of the City Manager, performs highly responsible and complex professional administrative work while assisting the City Manager with the direction and coordination of the activities of all City departments; promotes effective and efficient operations throughout the organization by facilitating interdepartmental cooperation and resource pooling; provides leadership in making recommendations in policy formulation; and acts for the City Manager in his absence.

#### SUPERVISION RECEIVED

Works under the general supervision of the City Manager

#### SUPERVISION EXERCISED

May exercise supervision over assigned departments, staff, and activities as designated by City Manager.

#### ESSENTIAL DUTIES AND RESPONSIBILITIES

Acts for the City Manager in his/her absence. Acts as liaison between the Council, departments, and public agencies with regards to obtaining information, addressing administrative and citizen concerns, and resolving problems. Assists the City Manager in the direction and coordination of City operations. Assists the City Manager in the preparation, coordination, review and presentation of the annual operating and capital improvement budget and with various budget control activities. Conducts organizational studies of programs and City departments, as assigned, to improve level of public services, efficiency and effectiveness. Develops recommendations for City Manager on staffing and organization. Represents the City Manager at meetings of boards and commissions, other agencies and public groups. May attend City Council Meetings. Analyzes legislation and makes recommendations on City action based upon proposed or enacted legislation. May supervise the operations of designated departments and assigned employees.

Serves as the City's Personnel Administrator under the direction of the City Manager regarding enforcement of all personnel policies and procedures; Responsible for implementation of the City's personnel rules and regulations; Handles the City's labor relations and employee grievance processes in compliance with negotiated labor agreements; Conducts investigations of confidential, personnel related matters for compliance with all federal, state labor laws and regulations. Conducts performance evaluations and approves compensation adjustments of assigned personnel, including designated department directors, and hires and disciplines subordinate employees; and performs other related work as assigned by City Manager.

#### PERIPHERAL DUTIES

Coordinates and oversees the implementation of policies and procedures for the City Manager; Confers with the City Manager and City Council to determine basic policies and procedures to municipal issues, as directed; Advises and assists all City Departments and related agencies in administering, reviewing and coordinating City activities; Resources and operations; Assists in the negotiation, development and administration of contracts; Conducts comprehensive analysis, studies, and surveys of administrative matters regarding the determination of policy and administrative action; Represents the City Manager at various community and official events and meetings; Meets with the public and with officials of other cities; agencies and civic groups in the development and coordination of City affairs; Assists in the drafting of proposed resolutions and ordinances; Prepares correspondence; and performs related duties as required.



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** JULY 7, 2010

**ORIGINATING DEPT.:** COMMUNITY DEVELOPMENT DEPARTMENT  
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR  
JIM NAKAGAWA, AICP, CITY PLANNER  
TYLER FOLTZ, ASSOCIATE PLANNER **TF**

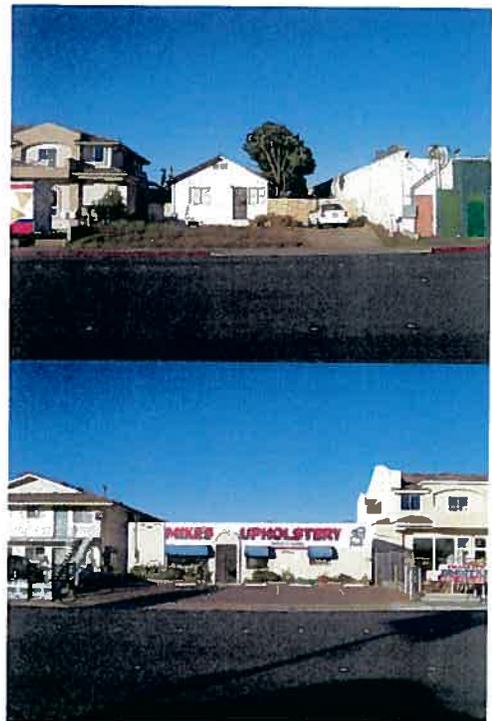
**SUBJECT:** CONSENT CALENDAR: KAMAL NONA (OWNER)/STOSH THOMAS (ARCHITECT); TIME EXTENSION FOR A CONDITIONAL USE PERMIT (CUP 060398), DESIGN REVIEW CASE (DRC 060399), SITE PLAN REVIEW (SPR 060400) FOR TWO MIXED USE DEVELOPMENTS WITH TWO RETAIL COMMERCIAL UNITS AND TWO RESIDENTIAL UNITS FOR EACH DEVELOPMENT (FOUR COMMERCIAL AND FOUR RESIDENTIAL UNITS TOTAL) LOCATED AT 1120, 1122 13<sup>TH</sup> STREET AND 1150, 1152 13<sup>TH</sup> STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863.

**PROJECT DESCRIPTION/BACKGROUND:**

A time extension request for a previously-approved application (MF 863) for a Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400) for two mixed-use developments, each development consisting of 2,004 square feet of retail commercial space on the first floor and two residential units totaling 1,896 square feet above the first floor for each building (4,008 square feet of retail commercial space total; 3,792 square feet of residential space total) at two 5,840 square foot parcels (APN 633-022-20-00 and 633-022-16-00) located at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street in the C-3 (Neighborhood Commercial) Zone. This project was approved by the City Council on June 17, 2009 (Resolution No. 2009-6772).

**PROJECT EVALUATION/DISCUSSION:**

No new zoning requirements have been enacted that would negatively affect the time extension request. The



applicant has been in preparation of building permit plan check submittal. However, the applicant claims that the project has been delayed due to unforeseeable circumstances and difficulty in obtaining construction financing. The applicant estimates that necessary financing to complete the project would take place within six (6) months.



### **ENVIRONMENTAL DETERMINATION:**

This project may be categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303 as a Class 3(c) project (New Construction).

### **COASTAL JURISDICTION:**

The project is not located in the Coastal Zone; the City will not need to consider evaluating the project with respect to conformity with coastal permit findings.

### **FISCAL ANALYSIS:**

The applicant has deposited approximately \$17,500.00 in Project Account Number 060398 to fund the processing of the discretionary permits and time extension request.

### **DEPARTMENT RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 2010-6910, approving a six (6) month time extension for Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400), which makes the necessary findings and provides conditions of approval in compliance with local and state requirements.

### **CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

### **Attachments:**

1. Applicant extension request
2. Resolution 2010-6910

c: file MF 863  
Kamal Nona, 1126 13<sup>th</sup> Street, Imperial Beach, CA 91932

ATTACHMENT 1

**GARMO & GARMO LLP**  
ATTORNEYS AT LAW

124 WEST MAIN STREET, SUITE 200  
EL CAJON, CALIFORNIA 92020  
TELEPHONE (619) 441-2500  
FACSIMILE (619) 631-6444

FREDDY A. GARMO  
ROBERT A. GARMO\*  
\*ALSO LICENSED IN MICHIGAN

OF COUNSEL MARSHALL A. GARMO  
STEVEN N. GARMO  
2820 ORCHARD LAKE ROAD, SUITE 201  
FARMINGTON HILLS, MICHIGAN 48334  
TELEPHONE (248) 626-0090

June 16, 2010

City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

**Re: Project Number MF863**  
**Address: 1120-1122, 1150-1152 13<sup>th</sup> Street, Imperial Beach, CA**

Dear Sir/Madam:

Please be advised that this office is assisting Mr. Kamal Nona, the owner of the property located at 1120-1122 and 1150-1152 13<sup>th</sup> Street, Imperial Beach, CA 91932, Project No. MF863. Due to some unforeseeable circumstances and difficulty in obtaining construction financing, Mr. Nona needs an extension of time on the current permit. We believe the amount of 180 days should be sufficient. By then, we should be able to resolve all of the outstanding issues and obtain the necessary financing to complete the project, which we have been working on.

Please consider our request and get back to us at your earliest convenience. Thank you for your cooperation and professional courtesy.

Very Truly Yours,  
GARMO & GARMO LLP

By:   
Freddy A. Garmo, Esq.

  
CC: Kamal Nona, owner



**RESOLUTION NO. 2010-6910**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A TIME EXTENSION FOR A CONDITIONAL USE PERMIT (CUP 060398), DESIGN REVIEW CASE (DRC 060399), AND SITE PLAN REVIEW (SPR 060400) FOR TWO MIXED-USE DEVELOPMENTS WITH TWO RETAIL COMMERCIAL SPACES AND TWO RESIDENTIAL UNITS IN EACH BUILDING (FOUR COMMERCIAL AND FOUR RESIDENTIAL UNITS TOTAL) LOCATED AT 1120, 1122 13<sup>TH</sup> STREET AND 1150, 1152 13<sup>TH</sup> STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863.**

**APPLICANT: KAMAL NONA (OWNER)**

**WHEREAS**, on July 7, 2010, the City Council of the City of Imperial Beach held a public meeting to consider the merits of approving or denying a time extension for a previously-approved application for a Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400) for two mixed-use developments at two 5,840 square foot parcels (APN 633-022-20-00 and 633-022-16-00) located at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street in the C-3 (Neighborhood Commercial) Zone; and

**WHEREAS**, on June 17, 2009, the City Council of the City of Imperial Beach held a duly noticed public meeting to consider the merits of approving or denying an application for a Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400) for two mixed-use developments with two retail commercial spaces and two residential units in each building (four commercial and four residential units total) located at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street (APN 633-022-20-00 and 633-022-16-00) in the C-3 (Neighborhood Commercial) Zone, legally described as follows:

1120, 1122 13<sup>th</sup> Street: Lots 43 and 44, inclusive in Block 2 of Imperial Beach Park, in the City of Imperial Beach, County of San Diego, State of California, according to Map thereof No. 1994, filed in the Office of the County Recorder of San Diego County, February 1, 1927; excepting therefrom the Easterly 10 feet thereof.

1150, 1152 13<sup>th</sup> Street: Lots 33 and 34, inclusive in Block 2 of Imperial Beach Park, in the City of Imperial Beach, County of San Diego, State of California, according to Map thereof No. 1994, filed in the Office of the County Recorder of San Diego County, February 1, 1927; excepting therefrom the Easterly 10 feet thereof.

**WHEREAS**, on April 17, 2008, the Design Review Board adopted DRB Resolution No. 2008-01 recommending conditional approval of the project design; and

**WHEREAS**, the project design of two mixed-use developments consisting of 4,008 total square feet retail commercial space on the first floor (2,004 square feet of commercial space per development) and four residential units totaling 3,792 square feet above the first floor (two residential units per development totaling 1,896 square feet each) located at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone, is compatible with other developments in the vicinity which consist of a mixed-use developments at 1126 13<sup>th</sup> Street and 1144, 1146 13<sup>th</sup> Street, commercial buildings to the east, and a residential neighborhood to the west, and, therefore, would be consistent with Policy D-8 (Project Design) of the Design Element of the General Plan; and

**WHEREAS**, the City Council finds that the project is in substantial compliance with Policy L-4g of the Land Use Element of the General Plan, which promotes Thirteenth Street Commercial Areas (C-3) for pedestrian-oriented commercial uses that serve the neighborhood; and

**WHEREAS**, this project complies with the requirements of the California Environmental Quality (CEQA) as this project is categorically exempt pursuant to the CEQA Guidelines Section 15303 as a Class 3(c) project (New Construction); and

**WHEREAS**, no new zoning requirements have been enacted that would negatively affect the time extension request; and

**WHEREAS**, the applicant has been in preparation of building permit plan check submittal; and

**WHEREAS**, the applicant claims that the project has been delayed due to unforeseeable circumstances and difficulty in obtaining construction financing; and

**WHEREAS**, the applicant estimates that necessary financing to complete the project would take place within six (6) months; and

**WHEREAS**, the City Council finds that there is sufficient cause to grant a time extension for this project; and

**WHEREAS**, the City Council reaffirms the following additional findings in support of its decision to approve the project:

**CONDITIONAL USE PERMIT FINDINGS:**

- 1. The proposed use at the particular location is necessary or desirable to provide a service or facility, which will contribute to the general well being of the neighborhood or community.**

In the C-3 (Neighborhood Commercial) Zone, the intent of the zone is to promote the local neighborhood demand for commercial goods and services such as markets, professional offices, personal services, restaurants and hardware stores (IBMC 19.28.010). This project will provide additional retail commercial space in this area of 13<sup>th</sup> Street to meet the demands for goods in the surrounding neighborhood. This project will also provide additional housing, four units total with off street parking, to meet the current housing demand. Also, the development of this project may encourage revitalization of the existing area, development of the nearby lots and increase patronage to the surrounding businesses.

- 2. The proposed use will not, under any circumstances, of the particular use, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.**

The proposed development, two mixed-use developments consisting of retail commercial space on the first floor and four residential units above the first floor total (two at each development) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone, will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. In the Conditions of Approval, specific conditions have been set forth by the Community Development Department, Public Works Department,

and the Public Safety Department to mitigate the concerns such a development project may create.

3. **The proposed use will comply with the regulations and conditions specified in the title for such use and for other permitted uses in the same zone.**

The proposed use will comply with the regulations and conditions specified in the title for such use and for other permitted uses in C-3 (Neighborhood Commercial) zone. The specific conditions that have been set forth by the Community Development Department will ensure that granting of the Conditional Use Permit will achieve compliance with zoning regulations.

4. **The granting of such conditional use permit will be in harmony with the purpose and intent of this code, the adopted general plan and the adopted local coastal program.**

The granting of the conditional use permit for a mixed-use development consisting of retail commercial space on the first floor and four residential units total above the first floor (two residential units per development) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone, will be in harmony with the purpose and intent of the zoning code (IBMC 19.82.040.D), the adopted general plan. The site is not within the coastal zone. The following list of specific conditions of approval set forth by the Community Development Department, Public Works Department, and the Public Safety Department will ensure that the granting of the Conditional Use Permit will achieve compliance.

#### **SITE PLAN REVIEW FINDINGS:**

5. **The proposed use does not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood, and is not detrimental or injurious to the value of property and improvements in the neighborhood.**

The applicant proposes a mixed-use development consisting of retail commercial space on the first floor and four residential units total above the first floor (two residential units per building) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone, that would not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. Each development proposes parking for the commercial and residential units in two on-site locations. The two mixed-use developments are required to have five commercial parking spaces and three residential parking spaces each; the commercial spaces are accessed off of 13<sup>th</sup> Street, and the residential spaces are accessed off the alley. In the Conditions of Approval, specific conditions have been set forth by the Community Development Department, Public Works Department, and the Public Safety Department to mitigate the concerns such a development project may create.

**6. The proposed use will not adversely affect the General Plan/Local Coastal Plan.**

The proposed mixed-use development consisting of retail commercial space on the first floor and four residential units total above the first floor (two residential units per building) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street is consistent with the C-3 (Neighborhood Commercial) zone, which promotes the local neighborhood demand for commercial goods and services.

**7. The proposed use is compatible with other existing and proposed uses in the neighborhood.**

The subject site is in the "Neighborhood Commercial" zone, which encompasses 13th Street from Ebony Avenue to the north and Fern Avenue to the south. "Neighborhood Commercial" also encompasses Imperial Beach Boulevard from Florence Street on the west to Georgia Street on the east. Within this area, commercial and residential uses vary in character, bulk, and scale. The proposed project is compatible with the established commercial and residential uses.

**8. The location, site layout and design of the proposed use properly orient the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.**

This site fronts along 13th Street. The adjacent property to the south of 1120, 1122 13<sup>th</sup> Street is a mixed-use development, and the property to the north of 1150, 1152 13<sup>th</sup> Street is a mixed-use development. There are commercial buildings to the east and a residential neighborhood to the west. The project has varied rooflines and architectural detailing and relief through the incorporation of building recesses. The applicant also proposes a variety of landscaping; including queen palms, Boxleaf Hebe, Lemon Bottlebrush, Evergreen shrub, Spreading Sunset and "Tall Fescue" lawn grass, in front of the commercial space. Landscaping will also be located in the residential open space off the alley and along the north and south side of the building. The overall design of the building should contribute positively in making an architectural statement along 13th Street. Many of the existing buildings in the area are older structures. The project shall properly orient the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.

**9. The combination and relationship of one proposed use to another on the site is properly integrated.**

The project includes two mixed-use developments with retail commercial space on the first floor and a total of four residential units total above the first floor (two residential units per building) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone. The combination and relationship of the commercial office space in relation to the residential units on the site is properly integrated.

**10. Access to and parking for the proposed use will not create any undue traffic problems.**

Parking access is from both 13th Street and the alley behind 13th Street. The commercial parking and employee parking will be located in the front of the building off of 13th Street. The parking provided for the residential units is also located off the alley and access to these parking spaces is from the alley. The parking design will not create any undue traffic problems.

**11. The project complies with all applicable provisions of Title 19.**

The project is subject to compliance with the zoning requirements per Chapter 19.28 of the City of Imperial Beach Municipal Code, titled "Neighborhood Commercial (C-3) Zone." A Conditional Use Permit is required for residential development above the first floor at a maximum density of one unit per every thousand square feet of lot area pursuant to Section 19.28.020.A.3. The parking for the project will be provided off 13th Street for the retail commercial units and employee parking and off the alley for the residential units. Site Plan approval by the City Council is required per Section 19.28.020.D. Design Review is required per Section 19.83.020.A.3.

**DESIGN REVIEW FINDINGS:**

**12. The project is consistent with the City's Design Review Guidelines.**

The design of the project is consistent with the City's Design Policy D-8 (Project Design) of the General Plan as per Design Review Compliance checklist attached hereto and findings contained herein.

**NOW, THEREFORE, BE IT RESOLVED** that a six (6) month time extension for Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400), for two mixed-use developments with retail commercial space on the first floor and four residential units total above the first floor (two residential units per building) at 1120, 1122 13<sup>th</sup> Street and 1150, 1152 13<sup>th</sup> Street, in the C-3 (Neighborhood Commercial) Zone is hereby **approved** by the City Council of the City of Imperial Beach subject to the following:

**CONDITIONS OF APPROVAL**

**PLANNING**

1. Storm water, drainage, and grading plans shall be approved by the City prior to issuance of building permits. Drainage should be directed to landscaped areas (bioswales) or to filters before it is discharged into the city's storm sewers or to the beach.
2. All catch basin subdrains shall be deepened to reach the area of percolation as identified in the soils report.
3. Owner must enter into and provide proof of post-construction (BMPs) maintenance agreement for all catch basin filters and subdrains.

4. Owner shall record a mutual access and parking agreement in concert with the master plans for parcels 633-022-20-00 (1120, 1122 13<sup>th</sup> Street), 633-022-19-00 (1126 13<sup>th</sup> Street), 633-022-17-00 (1144 13<sup>th</sup> Street), 633-022-18-00 (1146 13<sup>th</sup> Street), and 633-022-16-00 (1150, 1152 13<sup>th</sup> Street), and subject to approval of the City. Applicant shall incur any improvement/development costs on all parcels associated with appropriate access, parking, and circulation related to, and initiated by, the proposed project. If access cannot be legally obtained by applicant, an alternative plan for access, parking, and circulation may be approved by the Community Development Director.
5. The project height shall not exceed 28' as measured from existing grade. Elevation on site plan shall be revised to show the 28' height (currently shows 28'-9").
6. The final plans for the development of the site shall be in substantial compliance with the conceptual plans dated March 26, 2009. Landscaping and parking shall match Sheet TS; front access path shall follow Sheet C-2 (path must always remain clear for access). A sign plan will be processed separately (signs shown on all plans are not part of the proposal, and shall not be approved). Per the Design Review Board, signs shall be channel lettering set in complimentary colors to the buildings.
7. Drought tolerant landscaping (xeriscape) is required and subject to staff approval.
8. Residential units (particularly those facing east) shall have soundproof windows such as double-pane windows.
9. Approval of this request shall not waive compliance with any portion of the International Building Code and Municipal Code in effect at the time a building permit is issued.
10. All negative balances in the project account (060398) shall be paid prior to building permit issuance and final inspection.
11. Approval of Conditional Use Permit (CUP 060398), Design Review Case (DRC 060399), and Site Plan Review (SPR 060400) for this project is valid for an additional six (6) months from the date of final action, to **expire on December 17, 2010**. Conditions of approval must be satisfied, building permits issued, and substantial construction must have commenced prior to this date, or a time extension is granted by the City prior to expiration. This expiration date is separate from the sunset expiration date of 10 years for the life of the conditional use permit.
12. The applicant or applicant's representative shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed statement accepting said conditions.

#### **PUBLIC SAFETY**

13. Identify battery type, size and number to be utilized within facility. Include electrolyte capacity for lead acid, nickel cadmium or valve-regulated lead acid and/or weight of lithium-ion batteries.
14. Building to be clearly addressed. Address to be plainly legible and visible from the street. Numbers shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches and of contrasting color with their background.

**PUBLIC WORKS**

15. Ensure that the hot water tank P.T. discharge pipe is piped to discharge to the sanitary sewer system or the landscape area. A design that has the water discharge directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit - Order 2001-01.
16. Show the sewer lateral plans for both the existing two-story mixed-use buildings and the proposed new two-story mixed-use buildings on one of the plans provided to the City. The new buildings shall not be constructed over the existing sewer laterals.
17. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit - Order 2001-01.
18. Install landscape-watering system to landscape strip in the right-of-way per I.B.M.C. 19.50.040.F.
19. Require the building foundation elevation be at least 1 foot above gutter line to minimize flooding during storm conditions.
20. Exposed water valves on 13<sup>th</sup> Street to be secured with CAL-AM approved enclosure.
21. Remove the two (2) existing driveway approaches on 13<sup>th</sup> Street, and replace with new curb, gutter, and ADA compliant sidewalk along entire frontage of property. When cutting the sidewalk, applicant must remove entire panel of sidewalk to the nearest expansion joint. Install new curb and gutter along entire frontage of the property per San Diego County Regional Standard drawing G-2. Install five (5) foot wide, ADA compliant, sidewalk within entire frontage of the property per San Diego County Regional Standard Drawings G-7 and G-9. The curb & gutter shall be poured separately from the sidewalk. Concrete shall be 560-C-2500. New curbs to be painted RED for "No Parking".
22. For alley, sidewalk or curb & gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed", to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.
23. If it is necessary to cut into the alley pavement as part of this project, all concrete cuts in the alley must be replaced with #4 rebar dowels positioned every 1 foot on center. Concrete specification must be 560-C-3250. Concrete cuts must also comply with item 8 above and cuts parallel to the alley drainage must be at least 1-foot from the alley drain line
24. For any work to be performed in the street or alley, submit a traffic control plan for approval by Public Works Director a minimum of 5 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or Caltrans Traffic Control Manual.

25. All street work construction requires a Class A contractor to perform the work. Street repairs must achieve 95% sub soil compaction. Asphalt repair must be a minimum of four (4) inches thick asphalt placed in the street trench. Asphalt shall be AR4000 ½ mix (hot).
26. For any project that proposes work within the public right-of-way (i.e., driveway removal/construction, sidewalk removal/construction, street or alley demolition/reconstruction, landscaping and irrigation, fences, walls within the public right-of-way, etc.), a Temporary Encroachment Permit (TEP) shall be applied for and approved either prior to or concurrent with issuance of the building permit required for the project. Application for a Temporary Encroachment Permit shall be made on forms available at the Community Development Department Counter.
27. All street work construction requires a Class A contractor to perform the work. All pavement transitions shall be free of tripping hazards.
28. Construct trash or refuse enclosure and a recycling enclosure to comply with IBMC 19.74.090. Trash and recycling enclosures it to be enclosed by a six-foot high masonry wall and gate. The minimum size refuse enclosure shall be 6' by 9' and the minimum recycling enclosure shall be 4' by 8'. Gates shall not open directly into the alley and adequate pedestrian access from the east side of the property shall be provided. Note: Alternate trash/recycling enclosure may match proposed plan shown on Sheet TS.
29. Any disposal/transportation of solid waste/construction waste in roll-off containers must be contracted through the City's waste removal and recycling provider unless the hauling capability exists integral to the prime contractor performing the work.
30. Existing parcel impervious surfaces are required to not increase beyond the current impervious services as a post-conversion condition in order to maximize the water runoff infiltration area on the parcel in compliance with Municipal Storm Water Permit – Order 2001-01.
31. All landscape areas, including grass and mulch areas, must be improved to consist of at least 12-inches of loamy soil in order to maximize the water absorption during wet weather conditions and minimize irrigation runoff.
32. Preserve survey monuments on southeast and northeast property lines in or adjacent to the sidewalk. Install survey monuments on southwest and northwest property lines in alley. Record same with county office of records.
33. In accordance with I.B.M.C. 12.32.120, applicant must place and maintain warning lights and barriers at each end of the work, and at no more than 50 feet apart along the side thereof from sunset of each day until sunrise of the following day, until the work is entirely completed. Barriers shall be placed and maintained not less than three feet high.
34. Require applicant to provide verification of post construction Best Management Practice (BMP) maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and/or Conditional Use Permit. Agreement is provided through the Community Development Department.

35. Property owner must institute "Best Management Practices" to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant BMP practices shall include but are not limited to:
- Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
  - All recyclable construction waste must be properly recycled and not disposed in the landfill.
  - Water used on site must be prevented from entering the storm drain conveyance system (i.e., streets, gutters, alley, storm drain ditches, storm drain pipes).
  - All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
  - Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic-like material (or equivalent product) to prevent sediment removal into the storm drain system.
36. Drawing must show treatment BMPs to be used to minimize the urban runoff from the largely impervious surface proposed for the two lots. Treatment BMP calculations must be provided with the plan submission for building permits.
37. Applicant must underground all utilities. This project area is in the existing 13<sup>th</sup> Street Utility Underground District.

**PROTEST PROVISION:** The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its regular meeting held on the 7<sup>th</sup> day of July 2010, by the following roll call vote:

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBERS:</b>

*James C. Janney*

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

**ATTEST:**

*Jacqueline M. Hald*

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

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2010-6910 – A Resolution of the City Council of the City of Imperial Beach, California APPROVING A TIME EXTENSION FOR A CONDITIONAL USE PERMIT (CUP 060398), DESIGN REVIEW CASE (DRC 060399), AND SITE PLAN REVIEW (SPR 060400) FOR TWO MIXED-USE DEVELOPMENTS WITH TWO RETAIL COMMERCIAL UNITS AND TWO RESIDENTIAL UNITS IN EACH BUILDING (FOUR COMMERCIAL AND FOUR RESIDENTIAL UNITS TOTAL) LOCATED AT 1120, 1122 13<sup>TH</sup> STREET AND 1150, 1152 13<sup>TH</sup> STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863.

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
DATE



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GARY BROWN, CITY MANAGER**

**MEETING DATE: July 7, 2010**

**ORIGINATING DEPT.: CITY ATTORNEY**

**SUBJECT: AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR**

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**BACKGROUND:**

On August 19, 2009, the City Council enacted a moratorium (Ordinance No. 2009-1090) for a forty-five day period to study different approaches to banning or regulating medical marijuana dispensaries. During this period, the City Attorney's Office and City staff have been reviewing these issues. The Council voted on September 23, 2009 to extend this moratorium (Ordinance 2009-1091) for an additional 10 months and 15 days to allow further study of the issue.

This Council has made it a point to ensure that this issue receives ongoing attention, and Staff has briefed the Council several times at open City Council meetings about developments in medical marijuana law since the Council last extended the moratorium. Specifically, reports were presented in December of 2009 and April of 2010.

This report briefly summarizes the ongoing legal issues surrounding medical marijuana that affect the City's options regarding regulating marijuana and lists several options for the Council to consider with respect to this subject.

A. Litigation

Almost a year ago, prior to the initial moratorium, it was believed that an appeals court considering the City of Anaheim's complete ban on dispensaries would imminently reach a decision, based on rules generally requiring courts to issue decisions within 90 days of oral argument in the case. That court has not done so, requesting additional briefing and taking its time with its decision-making process. This case, considered by many to be the defining case on the subject of the extent of a public agency's land use and regulatory authority over medical marijuana, is now slated to be decided by mid-July, with a few additional months needed to see if the California Supreme Court will grant review to the case. Until the Anaheim case is resolved, it is unclear whether cities have authority to completely ban dispensaries. Nonetheless, some cities have elected to enact a complete ban based in part on the argument that marijuana is illegal under federal law.

A decision of secondary importance involves the City of Claremont. As noted in a previous update, an appeals court ruled that cities could get injunctions against dispensaries operating in zones where dispensaries are not permitted. Since this decision came out, several cities have successfully obtained injunctions against dispensaries in their communities. Courts continue to uphold a city's police power to regulate collectives and cooperatives and to close those that are in operation in violation of a city's zoning or business regulations.

While some cities have banned medical marijuana dispensaries, others, including both the City and the County of San Diego, have started drafting regulations setting zoning rules and licensing requirements for dispensaries. While it does not appear that there is litigation against the cities who have regulated or are designing regulations for dispensaries, some of those cities are taking enforcement actions against non-complying dispensaries.

The May edition of Western City Magazine (a publication of the League of California Cities) featured articles setting forth the legal bases upon which a city could either ban dispensaries or could regulate them. The article further highlights the uncertainty and the differing approaches taken by cities throughout the State of California on this topic.

**B. The San Diego County Grand Jury Report**

As discussed in more detail in a subsequent agenda item for July 7, the San Diego County Grand Jury issued a report in June 2010 related to the treatment of medical marijuana in San Diego County. The Grand Jury recommends that all cities in the County create regulatory schemes to allow cost neutral licensing, regulation and monitoring of medical marijuana collectives and cooperatives and establish a limit on such cooperatives and collectives within the jurisdiction. The Report specifies that the recommendations are based on both protecting the public from dispensaries as well as providing qualified patients access to medical marijuana. The Grand Jury's recommendation is not binding on any jurisdiction within the County, however, the City may consider it and must respond to the recommendations.

**C. The Initiative**

Also discussed in a previous update, on the November ballot will be an initiative which, among other things, would allow cities, if they want, to license places where marijuana may be sold or consumed, and may tax marijuana sales for both cost recovery and revenue-generating purposes. The Legislature would be allowed to limit cities' authority under this initiative, and there do not appear to be any clues about how the Legislature will determine what regulatory authority cities will have. Nor is it certain how the federal government will react to this initiative, which purports to legalize and license activity illegal under federal law.

Although the initiative does not address its interaction with Proposition 215's medical marijuana provisions, if passed it will present similar considerations for the City. Any local regulations dealing with recreational marijuana would likely be based on zoning and business licensing. Therefore, if passed, the City could consider addressing both topics together since the possibility of Coastal Commission review may affect both.

**DISCUSSION:**

As the background information above demonstrates, it is likely that the complete extent of a local agency's authority to regulate medical marijuana cooperatives and collectives is going to remain unclear at least until the Anaheim case is decided.

A. Extension of Moratorium:

At this point, it is virtually impossible for the City to avoid extending the moratorium. The moratorium is set to expire in mid-August. A new ordinance to regulate medical marijuana would need to be introduced, be heard a second time two weeks later, and then go into effect 30 days after that. Most ordinances would affect zoning, so the ordinance could require Coastal Commission approval. This process would not be complete before the current moratorium expires. Therefore, as directed by Council on April 21, 2010, an extension for the moratorium was prepared and is before the Council for adoption tonight.

Once Council extends the moratorium, the Council may give staff direction related to the future policy direction on this matter. Although the moratorium was drafted to provide an additional year, the Council does not have to wait the whole year to adopt any new ordinance on the subject.

B. Future Options:

The decision of what type of ordinance to adopt to deal with medical marijuana in the future is a policy decision. The Council can take into consideration the needs and concerns of the local community and decide what the best approach is for the City of Imperial Beach.

Based on the local policy concerns, the Council could direct staff to draft a ban on dispensaries, either to be implemented immediately or to be submitted promptly if Anaheim wins its challenge in the Court of Appeal. An outright ban, while the most likely to incur litigation (with unknown chance of success at this point) is the method most likely to prevent negative secondary effects associated with dispensaries.

A second option would be for Council to request that City staff submit a set of proposed regulations for dispensaries in order to begin the discussion of how collectives/cooperatives should be regulated within the City. Both the City of San Diego and the County of San Diego have been moving forward with regulatory recommendations involving dispensaries, with the City of San Diego discussing a less-restrictive regulatory scheme and the County proposing a more restrictive approach. The two different approaches are discussed in more detail below:

- (i.) Tight regulation – a regulatory scheme unlikely to please proponents of medical marijuana but most likely to address law enforcement concerns while still allowing some medical marijuana in the City of Imperial Beach. This approach would likely include, among other things, strict financial reporting, relatively high permit fees to cover law enforcement costs, strict limits on the number of dispensaries as well as their size, location, and models for operation, Conditional Use Permits requiring Council approval before a collective/cooperative could open, limits on hours of operation, advertising, ages of employees, and additional uses of facilities, and a host of other regulations.
- (ii.) Loose regulation – along the lines recommended by the City of San Diego's medical marijuana task force. This approach would make it relatively easy for cooperatives/collectives to open and operate, but would not include the types of controls over them and oversight of their finances and operations that law enforcement officials might like. This approach would likely include limits on zoning and operating hours and inspection and security requirements. It would likely include lower fees, easier permitting processes, lighter restrictions of their business models, lighter advertising limitations, and lesser inspection and reporting requirements.

If the Council would like this approach, please request that staff prepare some proposed regulations by a certain date for initial review before the Council. Council should also give staff

an indication of whether or not it would prefer a more restrictive approach or a less restrictive approach to regulation.

A third option would be to require another staff report in November or December, so that Council can decide at that time how it would like to proceed, after seeing the Anaheim decision (and awaiting the appeals period for the Anaheim case) and learning the outcome of the marijuana initiative on the November ballot.

Given the requirements for Coastal Commission approval of changes to zoning codes, it is approaching the point where, despite the legal uncertainties surrounding medical marijuana dispensaries, it will be necessary for the Council to offer direction about what policy approach it wishes to take on these issues.

With this in mind, City staff requests that the Council give staff guidance about how it would like dispensaries to be regulated: an outright ban, tight regulation, loose regulation, or some other approach.

**ENVIRONMENTAL DETERMINATION:**

This project is exempt from the California Environmental Quality Act (CEQA) because it is not a project as defined in Section 15378.

**FISCAL IMPACT:**

This ordinance has an unknown fiscal impact on the City.

**DEPARTMENT RECOMMENDATION:**

Staff Recommends the Mayor and City Council:

1. Mayor declares public hearing open;
2. Receive this report and public testimony;
3. Mayor closes the public hearing;
4. Mayor calls for the reading of the title of amended Ordinance No. 2010-1107, "AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR"
5. City Clerk to read Ordinance No. 2010-1107; and
6. Motion to dispense the first reading and adopt, with a four-fifths vote, Ordinance No. 2010-1107 by title only.
7. Give City staff guidance about how the Council would like dispensaries regulated – a total ban, tight regulation, or loose regulation – and provide a timeframe for when Staff should report back to Council.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Ordinance No. 2010-1107
2. Western City articles

# DRAFT

## ORDINANCE NO. 2010-1107

### AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR

**WHEREAS**, in 1996, the voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996"); and

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

**WHEREAS**, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities; and

**WHEREAS**, there is no state regulation or standard on the cultivation and/or distribution of medical marijuana and each local jurisdiction may establish local guidelines in accord with unique local concerns; and

**WHEREAS**, several California cities wherein medical marijuana dispensaries have been established have experienced an increase in crime, such as burglary, robbery, loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of the dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

**WHEREAS**, in October 2005, the State Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit, thus enabling the state to collect sales tax on medical marijuana sales; and

**WHEREAS**, in 2005, five California cities (Rocklin, Roseville, Oakland, Hayward and Fairfax) were polled by the City of Concord regarding secondary effects of medical marijuana dispensaries in the cities, and such secondary effects included street dealers attempting to sell to patrons entering the dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts which included similar experiences; and

**WHEREAS**, in February 2006, a clinic in Tustin was shut down by the police after an undercover officer was able to buy marijuana without a prescription, and in July 2006, several dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without a prescription; and

**WHEREAS**, in July 2007, narcotics agents shut down Natures Medicinal, Inc., a medical marijuana dispensary in the city of Bakersfield and an employee of that clinic pleaded guilty in 2008 to conspiring to distribute and possess with intent to distribute approximately 188 pounds of marijuana; and

**WHEREAS**, in May 2008 a CHP officer was critically injured and another motorist killed in Ventura after an individual drifted onto the shoulder and struck the officer during a traffic stop. The driver was charged with driving while intoxicated, and an investigation into the incident found that he had a large amount of marijuana in the vehicle that he had purchased from a dispensary in Compton; and

**WHEREAS**, in March 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana establishments; and

**WHEREAS**, the City of Imperial Beach has not adopted rules and regulations specifically applicable to the establishment and operation of dispensaries and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments; and

**WHEREAS**, based on the adverse secondary impacts experienced by other cities and the lack of any regulatory program in the City of Imperial Beach regarding the establishment and operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Imperial Beach as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

**WHEREAS**, the Imperial Beach Municipal Code does not expressly include regulations specifically addressing medical marijuana dispensaries; and

**WHEREAS**, the establishment of a medical marijuana dispensary in the City will result in a direct and immediate threat to the public health, safety and welfare because the City does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical marijuana dispensaries in the City; and

**WHEREAS**, the City Council of the City of Imperial Beach, acting pursuant to Government Code section 65858, enacted Ordinance 2009-1090, creating a 45-day moratorium on medical marijuana dispensaries at its meeting of August 19, 2009; and

**WHEREAS**, the City Council subsequently extended this moratorium in Ordinance 2009-1091 for another 10 months and 15 days pursuant to Government Code section 65858; and

**WHEREAS**, the Council has diligently monitored developments in the medical marijuana area, receiving periodic updates about legal developments defining what cities' obligations and authority may be to regulate or ban medical marijuana dispensaries; and

**WHEREAS**, based on testimony received and the information contained in the Staff Report, this period was insufficient to allow staff to fully consider and present a final proposal to the City Council; obtain approval from the Coastal Commission (if necessary) for a new scheme to regulate; and address the potential secondary negative effects of medical marijuana dispensaries, including potential environmental review; and

**WHEREAS**, the periods approved in Ordinances 2009-1090 and 2009-1091 were used to gather information from cities around the state to determine how best to respond to the issues involving regulating a product with serious primary and secondary impacts on the community; and

**WHEREAS**, earlier study periods allowed analysis of potential issues involved in passing a regulatory ordinance, there is still uncertainty as to the full extent of a local agency's regulatory authority over cooperatives and collectives, and any proposed regulations could require review and approval by the California Coastal Commission thereby requiring an extension of the review period to include the Coastal Commission approval process.

**NOW, THEREFORE**, the City Council of the City of Imperial Beach does hereby ordain as follows:

**SECTION 1. Findings and Determination.** The City Council of the City of Imperial Beach ("City") does hereby find and determine that:

- (a) The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve, and protect the public health, safety, and general welfare of its citizens; and
- (b) There is concern over the proliferation of medical marijuana dispensaries in San Diego County, the seemingly unregulated status of these dispensaries, the allegations (often upheld in court) that many dispensaries are distributing marijuana for non-medical purposes, the prevalence of burglaries at medical marijuana dispensaries and the associated burden on local law enforcement, and the secondary effects associated with controlled substance distributions run by unlicensed personnel; and
- (c) There is concern that the City's existing land use and zoning regulations do not explain with sufficient clarity how they control the location and operation of medical marijuana dispensaries and as a consequence do not adequately protect the health, safety, and general welfare of the citizens of Imperial Beach from the actual and potential impacts arising from those establishments; and

- (d) There is concern that these types of medical marijuana dispensaries are operating without paying their fair share of the expenses that they would impose on the City of Imperial Beach; and
- (e) The Council wishes to study the potential effects of restricting the operation of medical marijuana cooperatives/collectives, considering all available options ranging from banning such cooperatives/collectives, to determining appropriate location and operating requirements, to considering how such businesses could pay the revenue necessary to address unintended or secondary consequences of their operation within the city limits; and
- (f) The Council has determined that there is a current and immediate threat to the public health, safety, or general welfare of the City's citizens in allowing essentially unregulated medical marijuana dispensaries to obtain licenses and operate within the City and that granting permits to such dispensaries would result in a threat to public safety, health, and general welfare during the term of the study of additional regulations of medical marijuana dispensaries; and
- (g) The current study period has been inadequate to allow for the necessary study of the effects of medical marijuana dispensaries on the commercial areas of the City and of proposed regulatory measures, and therefore an extension of the moratorium in order to provide additional time for study and review of the issues is required.

**SECTION 2. Emergency Measures.**

- (a) No business licenses, use permits, or zoning approvals for any Medical Marijuana Dispensary within the City shall be approved, authorized, or granted, until such time as the City Council of the City of Imperial Beach has conducted an appropriate study of the effect of Medical Marijuana Dispensaries on the character of the City and the effect they may have on factors possibly including property values, density and effective utilization of property in Imperial Beach, the health, safety, and welfare of the community, and the legality and wisdom of various regulatory approaches toward Medical Marijuana Dispensaries, which study is intended to occur within a reasonable time.
  - (1) "Medical Marijuana Dispensary" means any person, business, organization, or land use involving or at any time engaged in the distribution of marijuana or related products within the City of Imperial Beach, whether for medical purposes or otherwise.
- (b) Applications that have been submitted to the City but are not deemed complete, as of the effective date of Ordinance 2009-1090, shall be subject to this Interim Ordinance.

**SECTION 3. Severability.** The City Council of the City of Imperial Beach hereby declares that should any section, paragraph, sentence, phrase, term, or word of this Interim Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Interim Ordinance irrespective of any such portion declared invalid.

**SECTION 4. Effective Date; Expiration.** Pursuant to California Government Code Section 65858, this interim ordinance is an urgency measure of the City Council of the City of Imperial Beach and shall take effect immediately upon the expiration of Ordinance 2009-1091. This Interim Ordinance shall remain in force and effect for a period of one (1) year from the date of the expiration of the time period established in Ordinance No. 2009-1091, adopted on September 23, 2009 and shall, thereafter, expire, all in accordance with Section 65858. The immediate effective date of this Interim Ordinance is necessary to preserve and protect the public health, safety, or welfare of the residents of the City of Imperial Beach.

**INTRODUCED, READ, PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach held on July 7, 2010 by the following vote:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
JENNIFER M. LYON  
CITY ATTORNEY

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Ordinance No. 2010-1107, **AN INTERIM ORDINANCE EXTENDING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL YEAR**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
DATE



## ATTACHMENT 2

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# Addressing the Issue of Medical Marijuana Dispensaries

BY MICHAEL JENKINS, LAUREN FELDMAN, SONIA CARVALHO AND JEFF DUNN



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## About Legal Notes

*This column is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.*

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In recent years perhaps no other legal issue has affected California's cities as much as medical marijuana. Cities have experienced a proliferation of dispensaries and other types of storefront medical marijuana distribution operations. While some cities allow dispensaries to provide medical marijuana, other cities have enacted outright bans on their use.

Although the possession, use and cultivation of marijuana is illegal under both state and federal laws,<sup>1</sup> California law allows an individual to use marijuana for certain medicinal purposes and creates a narrow affirmative defense to state criminal prosecution. In other words, when a person is arrested for marijuana possession, he can avoid being found guilty by asserting the defense that he is entitled to possess marijuana for medical purposes because he has complied with state law. In 1996, California voters approved Proposition 215, an initiative called the Compassionate Use Act (CUA) that allows people to use marijuana under certain circumstances for medical reasons.<sup>2</sup> The CUA was intended to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other illness for which marijuana provides relief."<sup>3</sup>

To further implement the CUA, the Legislature passed the Medical Marijuana Program Act (MMP) in January 2004.<sup>4</sup> The MMP created, among other things, a voluntary program for issuing government identification cards to qualified patients and their defined primary caregivers, and it created rules and regulations pertaining to the operation of cooperatives and collectives. One of the MMP's more interesting aspects is that it explicitly articulates that it does not pre-empt a city's local land-use authority; it is primarily this section of the MMP that has sparked the ongoing debate over how a city may regulate dispensaries.

The two articles presented here examine the legal standards and practices under which cities may enact local laws either to ban or regulate medical marijuana dispensaries.

**The Legal Basis for Banning Medical Marijuana Dispensaries**

**The Legal Basis for Allowing Medical Marijuana Operations**

**Footnotes:**

<sup>1</sup> See Cal. Health and Safety Code §§11357-11360 and 21 U.S.C. §801 *et seq.*

<sup>2</sup> Proposition 215 is codified at Cal. Health and Safety Code § 11362.5.

<sup>3</sup> Cal. Health and Safety Code §11362.765(b)(1)(D).

<sup>4</sup> The MMPA is codified at Cal. Health and Safety Code §11362.7 *et seq.*

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# The Legal Basis for Banning Medical Marijuana Dispensaries

BY SONIA CARVALHO AND JEFF DUNN



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Sonia Carvalho is a partner in the Irvine office of the law firm Best Best & Krieger. She has served as city attorney for numerous California cities and can be reached at [sonia.carvalho@bbklaw.com](mailto:sonia.carvalho@bbklaw.com). Jeff Dunn is also a partner in the Irvine office of the law firm Best Best & Krieger. He represents cities throughout California on medical marijuana dispensary issues and can be reached at [jeffrey.dunn@bbklaw.com](mailto:jeffrey.dunn@bbklaw.com).

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Cities traditionally exercise nearly exclusive control over land use. They regularly invoke their land-use authority to limit or prohibit the location of various types of businesses and operations within their communities. They do so under their basic police powers, which permit them to adopt laws protecting health, safety and welfare. In instances where the state has not pre-empted local law-making authority, a city is free to regulate. Medical marijuana dispensaries are not expressly mentioned in either the Compassionate Use Act (CUA) or in the Medical Marijuana Program Act (MMP); and in the recent *City of Claremont v. Kruse* case the court's decision confirmed that these laws do not pre-empt a city's enactment or enforcement of land use, zoning or business license laws as they apply to medical marijuana dispensaries.<sup>1</sup>

When a city's zoning code does not allow marijuana dispensaries or collectives, and it expressly states that any condition caused or permitted to exist in violation of its provisions constitutes a public nuisance, the city can ban the use. Accordingly, the city may enjoin the nuisance by filing a civil abatement action. Despite claims that the state's medical marijuana laws prevent cities from regulating marijuana dispensaries, the California Court of Appeal's thorough analysis of state pre-emption law in *Kruse* concluded that cities retain their police power to regulate and, if necessary, restrict the operation of dispensaries.

The courts have recognized that the CUA and the MMP create only narrow exceptions to criminal drug possession penalties. Numerous judicial decisions have confirmed that California voters approved limited defenses to possession of marijuana and did not intend to allow large-scale commercial operations. Most important to the theory that cities retain the right to ban dispensaries is the 2005 *People v. Urcizeanu*

decision, in which the court of appeal noted that the CUA "creates a narrow defense to crimes, not a constitutional right to obtain marijuana."<sup>2</sup>

### **Two Methods for Banning Marijuana Dispensaries**

Some dispensary operators have obtained business permits under false pretenses, applying for city land-use and business permits under the guise of pharmacies or other permissible uses.<sup>3</sup> In other cases operators outright refused to comply with city laws requiring business permits.<sup>4</sup> Operators like these have been ordered by the courts to cease business based on the regulations that the cities had in place.

There are two primary methods cities use to ban dispensaries:

1. Adopt a business license provision that says licenses will be issued only to those operating in compliance with state and federal law; and
2. Prohibit dispensaries in all land-use zones.

Nearly 200 California cities have either banned pot collectives or have enforced moratoriums, according to Americans for Safe Access. The medical cannabis advocacy group reports on its website that 34 cities in California have specific ordinances that allow for medical marijuana cooperatives.

### **Pending Litigation**

The City of Anaheim enacted an ordinance in 2007 banning all marijuana distribution facilities consisting of three or more people who otherwise qualified as patients or caregivers under California's MMP and CUA. The ban imposed a criminal penalty.

A collective called the Qualified Patients Association filed a lawsuit challenging the ban. The collective argued that local governments' ability to ban marijuana collectives is pre-empted by the California medical marijuana law. The collective argued that local governments may regulate but not ban marijuana distribution facilities.

The trial court disagreed, concluding there was no pre-emption and that Anaheim could use its police powers to ban marijuana distribution facilities and impose a criminal penalty for violating the ban. The collective has appealed and the matter is pending in the Fourth District Court of Appeal.

### **Unresolved Issues**

While some cities have adopted ordinances permitting marijuana dispensaries under certain rules and regulations, the question of whether cities can authorize such uses by ordinance remains unclear. Government Code section 37100 states that a city's "legislative body may pass ordinances not in conflict with the Constitution and laws of the state or the United States." As all use of marijuana is illegal under federal law, cities may lack the authority to adopt enforceable ordinances permitting marijuana dispensaries under any rules or regulations.

### **Footnotes:**

<sup>1</sup> The California Supreme Court denied review and further denied requests to have the *Kruse* opinion republished. *City of Claremont v. Kruse*, 2009 Cal. LEXIS 12497 (Cal., Dec. 2, 2009).

<sup>2</sup> *People v. Urcizeanu* (2005) 132 Cal.App.4th 747.

<sup>3</sup> *City of Corona v. Naulls* (2008) 166 Cal.App.4th 618.

<sup>4</sup> *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.

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# The Legal Basis for Allowing Medical Marijuana Operations

BY MICHAEL JENKINS AND LAUREN FELDMAN

Michael Jenkins and Lauren Feldman are attorneys in the law firm of Jenkins & Hugin, which serves as city attorney for 11 Southern California cities and as special counsel for cities throughout the state. Jenkins can be reached at [mjenkins@localgovlaw.com](mailto:mjenkins@localgovlaw.com). Feldman can be reached at [lfeldman@localgovlaw.com](mailto:lfeldman@localgovlaw.com).

This article addresses how cities that support patients' access to medical marijuana can use an effectively drafted ordinance to permit properly run cooperatives or collectives, regulate them and keep them from proliferating.

California cities may adopt ordinances that do not conflict with state or federal laws.<sup>1</sup> Marijuana is a controlled substance that may not be cultivated, possessed or used under federal law.<sup>2</sup> The U.S. Supreme Court determined that strict compliance with California's medical marijuana program will not insulate a marijuana user or supplier from federal prosecution.<sup>3</sup> Nonetheless, the current U.S. Justice Department has indicated that dispensaries operating in accord with California law will not be a priority for federal prosecution.

In California, marijuana can be used legally for personal medical use. Two panels of the California Court of Appeal found in recent years that California's medical marijuana program is not pre-empted by federal law;<sup>4</sup> they concluded that the state's decriminalization of medical marijuana does not conflict with federal law because it does not purport to "legalize" marijuana or immunize marijuana possession or use from federal prosecution. Rather, California has decided not to punish certain marijuana offenses when used for medicinal purposes.<sup>5</sup> Until a court determines otherwise California's program does not conflict with federal law, and a local ordinance sanctioning medical marijuana collectives meets the requirement to be consistent with federal law.

A local ordinance regulating cooperatives and collectives is also consistent with state law. The Legislature stated a clear intent to enhance medical marijuana access through collective and cooperative cultivation projects,<sup>6</sup> indicating the law contemplates collective distribution. Nothing in state law prohibits collectives from maintaining a place of business,<sup>7</sup> and each city must determine how to regulate this use to ensure collectives operate within the narrow parameters of state law. Consequently, an ordinance permitting a use that is contemplated under state law and implements a state policy by making medical marijuana more accessible to seriously ill patients should be considered a proper exercise of a city's legislative authority.

The California Court of Appeal has determined that the state's authorization of cooperatives and collectives is intended to facilitate the transfer of medical marijuana to qualified patients. The court also found that storefront dispensaries that qualify as "cooperatives" or "collectives" and otherwise comply with state law, as interpreted by the attorney general, may operate legally.<sup>8</sup>

The attorney general published guidelines to clarify how a legitimate cooperative or collective is operated. The guidelines:

- Limit lawful distribution activities to true agricultural co-ops and collectives that provide crops to their members;
- Prohibit collectives and cooperatives from profiting from the sale of marijuana;

- Allow members to be reimbursed for certain services (including cultivation), provided that the reimbursement is limited to the amount to cover overhead costs and operating expenses;
- Allow members to reimburse the collective for marijuana that has been allocated to them.<sup>9</sup> Marijuana may be provided free to members, provided in exchange for services, allocated based on fees for reimbursement only, or any combination of these; and
- Declare that distribution of medical marijuana is subject to sales tax and requires a seller's permit from the State Board of Equalization.

Unlike an agricultural cooperative, a "collective" is not defined under state law, but it similarly facilitates agricultural collaboration between members. A co-op, by definition, files articles of incorporation and must abide by certain rules for its organization, elections and distribution of earnings. A co-op's earnings must be used for the general welfare of its members or be distributed equally in the form of cash, property, services or credit. Both co-ops and collectives are formed for the benefit of their members and must require membership applications and verification of status as a caregiver or qualified patient; they must also refuse membership to those who divert marijuana for non-medical use. Collectives and co-ops should acquire marijuana from and allocate it to only constituent members.

Storefront dispensaries that deviate from these guidelines are likely outside the scope of state law and may not be permitted at the local level.

### **Regulating Medical Marijuana Collectives and Cooperatives**

The most obvious methods for regulating the distribution of medical marijuana are through a zoning ordinance or regulatory business license ordinance — or a combination of both. Some cities require that collectives obtain a conditional use permit. West Hollywood recently rejected this approach. The city wanted a mechanism to examine an operator's criminal background and did not want the use to run indefinitely with the land. Consequently, the city's medical marijuana collectives are a permitted use in certain commercial zoning districts subject to distancing requirements from sensitive uses and other collectives, with a cap of four facilities operating at one time.

West Hollywood consulted with existing collective operators when drafting the operating requirements contained in its regulatory business license ordinance.<sup>10</sup> The requirements include criminal background checks, compliance with the attorney general's standards for collectives (such as cash management practices), security requirements, limitations on operating hours, and a requirement that marijuana cannot be consumed onsite. Collectives may not occupy a space larger than 4,000 square feet, may not issue doctor recommendations onsite and are subject to limitations on the source of the collective's marijuana. The city holds bimonthly meetings with law enforcement and collective operators to address any negative impacts associated with the operations.

On the other hand, the cities of Arcata,<sup>11</sup> Santa Cruz<sup>12</sup> and Malibu<sup>13</sup> effectively regulate collectives by requiring a use permit and imposing strict distancing requirements and operating standards. Arcata additionally subjects each collective to an annual performance review.

Most cities that permit collectives have determined that the distancing requirement and a cap on the number of facilities are the most effective ways to prevent an overconcentration of this use. The combination of the effective regulatory mechanism and the working relationship with collective operators has also proven to meet the goals of supporting access to medical marijuana while controlling negative impacts and the proliferation of collectives in a city.

### **Footnotes:**



<sup>1</sup> Cal. Govt. Code section 37100.

<sup>2</sup> 21 U.S.C. Sections 801 *et seq.*

<sup>3</sup> *Gonzalez v. Raich* (2005) 545 U.S. 1.

<sup>4</sup> *San Diego et al v. NORML* (2008) 165 Cal.App.4th 798; *Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355.

<sup>5</sup> *Garden Grove* 157 Cal.App.4th 355; see also Attorney General August 2008 Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines").

<sup>6</sup> Stats, 2003, c. 875 (S.B. 420), Section 1, subd. (b)(3).

<sup>7</sup> *People v. Hochanadel* (2009) 176 Cal.App.4th 347, 363.

<sup>8</sup> *Hochanadel* 176 Cal.App.4th at 363.

<sup>9</sup> See Cal. Health and Safety Code Section 11362.765.

<sup>10</sup> West Hollywood Municipal Code Chapter 5.70.

<sup>11</sup> Aracta Municipal Code Section 9.42.105.

<sup>12</sup> Santa Cruz Municipal Code Section 24.12.1300.

<sup>13</sup> Malibu Municipal Code Section 17.66.120.





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: GARY BROWN, CITY MANAGER**

**MEETING DATE: JULY 7, 2010**  
**ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT**  
**GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR**  
**JIM NAKAGAWA, AICP, CITY PLANNER**

**SUBJECT: PUBLIC HEARING: PLANNING COMMISSION**  
**INTERPRETATION (PCI 100040) TO DETERMINE**  
**APPROPRIATE CLASSIFICATION AND/OR CRITERIA FOR**  
**ALLOWING OUTDOOR USES. MF 1048**

**PROJECT DESCRIPTION/BACKGROUND:**

This is a City-initiated request (Master File 1048) for a Planning Commission Interpretation (PCI 100040) to determine the appropriate use classification and/or criteria for allowing outdoor vendors, uses, and carts. Chapter 19.72 (Outdoor Uses) of the Zoning Ordinance requires that business activities be conducted within a building except that certain outdoor uses are exempted and other outdoor businesses that are not specifically listed as exempted may be allowed by a determination of the Planning Commission (i.e. the City Council). The Zoning Ordinance provides that the Planning Commission may interpret provisions of the Zoning Ordinance to clarify ambiguous or uncertain requirements as quoted below:



**19.02.080. Clarifications of ambiguity or uncertainty.**

A. If ambiguity or uncertainty arises concerning the appropriate classification of a particular use within the meaning and intent of this title, or with respect to matters of height, yard requirements, area requirements or other requirements of this title as they may pertain to unforeseen circumstances, it shall be the duty of the Planning Commission to ascertain all pertinent facts and, by resolution, set forth its findings and its interpretation, and such interpretation shall govern, unless appealed to the City Council. Such findings shall set forth a determination that the proposed interpretation is consistent with the goals and policies of the General Plan, Coastal Act, the proposed zone in which it is to be located, and the certified Local Coastal Program.



B. Any interested party may initiate an action under this section by submitting a letter to the Community Development [Department]. The issue shall be considered at the next available Planning Commission meeting. (Ord. 94-884, 1994)

### **PROJECT EVALUATION/DISCUSSION:**

The City recently approved a coastal development permit, a conditional use permit, and site plan review for the Imperial Beach Farmers Market at Pier Plaza (MF 1036) which may be characterized as a program of portable vendors operating as an open-air market. A number of other outdoor vendors (BBQ stands, hot dog carts, and taco vendors) have asked the City if they could operate as outdoor vendors apart from the venue of the Farmers Market. The City was advised by an outdoor vendor that the Farmers Market does not allow food vendors that market meats.



A number of other cities have had a history of outdoor markets. Some date back to ancient times. In Greece, the Agora (Ἀγορά) was the central marketplace and focal point for politics and social interaction that took place outdoors. The Roman forum also performed the same function. The advent of refrigeration and motorized vehicles, however, transformed urban development and marketing. Produce and merchandise were now offered in enclosed stores instead of open-air markets perhaps for a variety of reasons: security, health, aesthetic, and market reasons.



However, San Francisco has retained some outdoor markets such as Fisherman's Wharf and Seattle has retained Pike Place. Europe, Asia, and Latin America also retain their tradition of open-air markets.



Some cities that have large venues allow swap meets/flea markets.



Some outdoor vendors who operate alone can exploit the attraction of a popular venue such as Central Park in New York City or Balboa Park to capture customers similar to the way anchor stores in shopping malls will attract specialty stores that hope to capture customers. Pier Plaza in Imperial Beach has a similar potential. New York City, however, has had an enforcement problem with individual vendors who battle for turf in the trade zone.

## Turf War at the Hot Dog Cart



Outdoor activities have the potential to be unattractive. Imperial Beach, as have other cities, requires, with some exceptions, that business activities be conducted within a building:

**Chapter 19.72. OUTDOOR USES****19.72.010. Purpose of provisions.**

The purpose of this chapter is to improve the appearance of the city, to safeguard and enhance property values, and to promote and protect the public health, safety and welfare by requiring business activity not normally conducted out-of-doors, or which may be objectionable to persons viewing such activity from public property, to conduct such activity inside a building. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

**19.72.020. Applicability of provisions.**

The provisions of this chapter apply to any business, activity or use which is required to obtain a business license as required by this code, regardless of the zone in which it is located. This chapter does not apply to any business or activity carried out on public property or streets. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

**19.72.030. Regulations generally.**

Except as otherwise provided, any business, activity or use which is required to obtain a city business license shall conduct such business activity or use entirely inside a building or buildings. No item of personal or business property offered for sale, lease, rent or trade shall be stored or displayed permanently or temporarily outside a building, except that such items of personalty may be stored or maintained in a storage area located in the rear yard or yard area opposite the fronting street; provided, such storage area shall be completely enclosed by an opaque fence not less than six feet in height. For purposes of this section, the limit of a building shall be considered the area enclosed by the exterior walls. Roof projections, overhangs, awnings and alcoves shall not be considered inside a building. All businesses shall be conducted on private property. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

**19.72.040. Exempted uses.**

The provisions of this chapter do not apply to the following:

- A. Service stations;
- B. Drive-in and walk-up restaurants;
- C. Automobile, motorcycle, boat, trailer, bicycle and other vehicular sales or rentals;
- D. Temporary construction and reconstruction projects;
- E. Carnivals, circuses, fairs and amusements normally conducting business outside of buildings;
- F. Rental of beach recreation equipment;
- G. Other businesses which, by determination of the planning commission, normally conduct all or part of their business outside of buildings. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

**19.72.050. Temporary outdoor sales or displays—Permit required.**

Temporary outdoor display and sale of items of property shall be permitted under the following conditions:

- A. A permit authorizing such temporary outdoor display or sales shall be obtained from the community development department. At the time the application is filed the applicant shall pay a temporary sales permit fee in such amount as the city council shall from time to time establish by resolution.

B. Application for each permit shall be made on forms provided by the community development department. Such application shall be made not less than five days prior to the date of sale or display.

C. Businesses shall display or store merchandise only on private property. All merchandise and goods shall be attended during hours of display.

D. Each business shall be permitted not more than four permits a year.

E. Permits shall be effective for not more than seventy-two consecutive hours from the starting time specified on the permit.

F. The applicant shall show that the sale is to be conducted in a safe and proper manner which will not obstruct traffic or cause hazardous or otherwise detrimental conditions. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)



Cities began to recognize, though, that organized outdoor activities can convey a sense of social interaction, bustling trade, excitement and interest. Street fairs are held in various cities to celebrate certain festive events. Interest in farmers markets also grew, in part, for this reason. The City of Imperial Beach does not have an extensive history with outdoor vendors other than those who participate at special events such as the annual Sandcastle Competition Festival. Our Farmers Market at Pier Plaza is a new venture with open-air markets in Imperial Beach. It is operating as an organized program under city entitlements.



Many of the outdoor cart vendors propose to offer food and/or beverages and our Outdoor Uses provision exempts drive-in and walk-up restaurants from the enclosure requirement. However, our zoning ordinance narrowly defines a restaurant such that it tends not to consider a café or outdoor cart vendors (which are not explicitly defined) as a restaurant use.

**19.04.655. Restaurant.**

“Restaurant” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has an adequate seating area for the consumption of meals and suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals. As used in this definition, the word “meals” means the usual assortment of foods commonly ordered at various hours of the day; the services of only such foods as sandwiches or salads shall not be deemed in compliance with this requirement. As used in this definition, the words “suitable kitchen facilities” shall include cooking equipment (such as deep fryers, stoves or ovens) requiring hood fans, an operable dish washing machine, and a central freezing and refrigeration area. The percentage of alcohol sales in monetary terms shall not exceed that of food sales and still comply with this definition. (Ord. 94-884, 1994)

Since cafes and restaurants are both eating and drinking establishments, the Planning Commission Interpretation would seek to clarify that a café may also be allowed as an exempted outdoor use. Additionally, staff is seeking a determination and clarification that outdoor cart vendors fall under the classification of “other businesses which normally conduct all or part of their business outside of buildings,” as provided under IBMC Section 19.72.040.G.

**General Plan/Local Coastal Plan/Zoning Consistency:** The General Plan has some goals and policies that can relate to outdoor uses.

**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.

- A town that is not overcrowded or exclusive like many California beach communities.
- A town with a human scale and a relaxed pace of life.

**L-4 Commercial Uses and Areas**

Specific policies for commercial uses and areas are:

**a. Attractive and Stimulating Surroundings**

Commercial areas should be enjoyable places in which to shop and work. This means providing pedestrian scaled design, landscaping of building sites and parking lots, street trees, screening unsightly storage and parking areas and banning out-of-scale advertising. All new commercial developments and major expansions of existing commercial uses should be subject to design controls.

**b. Fostering New Commercial Development**

Commercial development should be encouraged to increase the City's tax base, and evaluated in terms of the effect it will have on the economy and quality of living in the City. Particular emphasis should be placed on the development of new businesses and fostering commercial uses providing goods and services to residents and visitors.

**e. Seacoast Commercial (C-2 & MU-2)**

The Seacoast commercial area shall serve as a visitor serving, pedestrian-oriented commercial area. Existing residential uses shall be slowly transitioned to new visitor serving commercial uses. As part of the design review, 2nd or 3rd stories may be

required to be set-back from Seacoast Drive.

Timeshares shall be prohibited on the first floor unless 25% are reserved for overnight accommodation.



In addition to these land use policies, the City should consider economic equity. Enclosed stores are required to comply with regulations such as building codes, design review, and parking requirements that translate into additional overhead expenses. The City promotes outdoor dining to enhance the pedestrian experience along the street front but it needs to ensure that individual outdoor vendors do not operate at an unfair advantage over enclosed businesses. Also, we anticipate that having individual vendors scattered throughout the City may not be consistent with the aesthetic character that the City wants to promote. In order to promote the aesthetic quality of the City as expressed in Chapter 19.72 (Outdoor Uses), outdoor vendors may need to be operating through a location program under city entitlements similar to the way the Farmers Market was allowed to operate.

If the Farmers Market does not allow meat vendors, these vendors could be accommodated under separate city entitlements. Other farmers markets allow meat vendors and a number of cities hold events such as BBQ festivals that take place once a year. It is possible to allow vendors that operate a cook-out (“a la Parilla junto a la playa” or “BBQ by the Beach”) other than on an annual basis. It should go through an entitlement process (coastal development permit, conditional use permit, and site plan review) similar to the Farmers Market in order for the City Council to ensure that the activity addresses issues such as parking, aesthetics, community character, and equity. A County health permit is always required for food vendors.



Push cart vendors are also outdoor uses that have some history in other cities, such as in San Diego. We might apply some of San Diego’s ideas and regulations by allowing them in certain locations in the City of Imperial Beach through a discretionary permit. If directed to do so, staff could allow outdoor vendors as a permitted use subject to typical use and operating restrictions. Staff could also return to the City Council with an ordinance specifically regulating these uses.



**ENVIRONMENTAL DETERMINATION:** This interpretation may be exempted from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(3) (General Rule). However, individual projects would be evaluated for impacts per CEQA regulations as their applications are processed for review.



**Coastal Development Permit:** Vendors have asked to be located in the coastal zone as defined by the California Coastal Act of 1976. However, since this interpretation is not a coastal development permit per se, a subsequent coastal development permit may be required for those projects located in the coastal zone.



**FISCAL ANALYSIS:**

As applicants apply for permits, deposits will be required to defray the processing costs for any discretionary permits. Additional fees may be levied to underwrite the cost of providing public services such as trash pickup and security.

**DEPARTMENT RECOMMENDATION:**

A determination or interpretation by the Planning Commission is requested that would provide sufficient direction to city staff in applying the Outdoor Uses provisions to permanent portable outdoor vendor business applications. Among the options that may be considered by the City Council acting as the Planning Commission include:

1. Disallow push carts and outdoor vendors.
2. Allow push carts and outdoor vendors through a discretionary permit (such as a conditional use permit) that provides for a location program where these uses would be allowed in order to address parking, accessibility, community character, and other issues; and interpret that cafes are eating and drinking establishments similar to restaurants that could qualify as an exemption under Section 19.72.040.
3. Allow push carts and outdoor vendors only after the City Council has adopted new regulations that would permit push carts and outdoor vendors.
4. Allow push carts and outdoor vendors through staff approval perhaps during an interim period prior to the adoption of new regulations that would permit push carts and outdoor vendors and interpret that cafes are eating and drinking establishments similar to restaurants that could qualify as an exemption under Section 19.72.040.

Staff recommends that the City Council/Planning Commission:

1. Open the public hearing.
2. Consider public testimony.
3. Close the public hearing.

4. Consider and select among the above options or other alternatives to provide direction to staff on how to handle push carts and outdoor vendors.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.



\_\_\_\_\_  
Gary Brown, City Manager

- c: file MF 1048  
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**STAFF REPORT  
IMPERIAL BEACH REDEVELOPMENT AGENCY**

**TO:** CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY  
**FROM:** GARY BROWN, EXECUTIVE DIRECTOR  
**MEETING DATE:** JULY 7, 2010  
**ORIGINATING DEPT.:** PUBLIC WORKS *HAL*  
**SUBJECT:** RESOLUTION AWARDED A CONTRACT FOR CERTAIN PUBLIC WORKS CONTRACT - SKATE PARK ELEMENT CIP (P07-101)

**BACKGROUND:** The Five-Year Capital Improvement Program Budget Fiscal Year 2004/2005 through Fiscal Year 2008/2009 adopted by Resolution No. 2005-6089 and as amended December 7, 2005 – Resolution No. 2005-6253 and February 6, 2008 – Resolution No. 2008-2008-6574 - included Skate Park Element CIP (P07-101) project. This project was to hire a consultant to design a replacement skate element for the deteriorated and unusable wood element at the Sports Park Recreation Center. The Skate Park Element construction was unfunded. The Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 approved the project for design and construction for a 7,500 square foot outdoor skate park at Sports Park. The design was to construct an all-concrete surface intended exclusively for skateboards that primarily utilizes street/plaza style, with some transitional features for all-level skating.

The project has been designed; the bid packages prepared and the bids have been advertised. The bid opening was scheduled for Thursday, June, 24, 2010.

**DISCUSSION:** Construction of the Skate Park Element CIP (P07-101) project was advertised for bids May 27, June 3, June 10, and June 17, 2010. Bids were opened and evaluated in an advertised public meeting, at 2:00 p.m., June 24, 2010. The lowest responsive and qualified bidder for the “Skate Park Element CIP (P07-101)” project was from Fordyce Construction, Inc. for \$241,244 (Two Hundred Forty-One Thousand, Two Hundred Forty-Four Dollars).

The three contractors who submitted proposals are listed below along with their proposal amounts:

- |                                       |              |
|---------------------------------------|--------------|
| o Fordyce Construction, Inc.          | \$241,244.00 |
| o Hardcore Shotcrete Skateparks, Inc. | \$315,059.00 |
| o MW Construction, Inc.               | \$336,992.00 |

The engineer’s estimate was \$254,860

**ENVIRONMENTAL DETERMINATION:**

Resolution 2010-6836 adopted January 20, 2010 approved the Regular Coastal Development Permit (CP 090023), Design Review (DRC 090024), Site Plan Review (SPR 090025), and Mitigated Negative Declaration (SCH # 2009121003).

**FISCAL IMPACT:**

Revenue:

- Available Funding through grants and donations \$142,000
- Available RDA Tax Increment (non-housing) \$200,000
- **Total Revenue** **\$342,000**

Estimated Costs:

- Grindline Skateparks, Inc. contract for design \$ 27,360
- Grindline Skateparks, Inc. contract for construction consulting \$ 14,000
- Fordyce Construction, Inc. contract \$241,244
- Project Administration \$ 45,780
- **Total** **\$328,384**

**DEPARTMENT RECOMMENDATION:**

1. Receive this report.
2. Adopt the attached resolution
3. Authorize the City Manager to approve a purchase order for the amount of the bid price.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, Executive Director

Attachments:

1. Resolution No. R-10-224

**RESOLUTION NO. R-10-224**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS CONTRACT – SKATE PARK ELEMENT CIP (P07-101)**

**WHEREAS**, the Five-Year Capital Improvement Program Budget Fiscal Year 2004/2005 through Fiscal Year 2008/2009 adopted by Resolution No. 2005-6089 and as amended December 7, 2005 – Resolution No. 2005-6253 and February 6, 2008 – Resolution No. 2008-2008-6574 - included Skate Park Element CIP (P07-101) project; and

**WHEREAS**, the Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 approved the project for design and construction for a 7,500 square foot outdoor skate park at Sports Park; and

**WHEREAS**, the design was to construct an all-concrete surface intended exclusively for skateboards that primarily utilizes street/plaza style, with some transitional features for all-level skating; and

**WHEREAS**, the project has been designed; the bid packages prepared and the bids have been advertised; and

**WHEREAS**, construction of the Skate Park Element CIP (P07-101) project was advertised for bids May 27, June 3, June 10, and June 17, 2010; and

**WHEREAS**, bids were opened and evaluated in an advertised public meeting, at 2:00 p.m., June 24, 2010; and

**WHEREAS**, The lowest responsive and qualified bidder for the "Skate Park Element CIP (P07-101)" project was from Fordyce Construction, Inc. for \$241,244 (Two Hundred Forty One Thousand, Two Hundred Forty-Four Dollars); and

**WHEREAS**, the engineer's estimate was \$254,860.

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

1. The above recitals are true and correct.
2. The legislative body hereby rejects all proposals for bids except that identified as the lowest responsible bid. The bid of the lowest, responsible qualified bidder will be on file with the transcript of these proceedings and open for public inspection in the City Clerk Department on file as Contract No. \_\_\_\_\_.
3. The contractor shall not commence construction or order equipment until he has received a Notice to Proceed.
4. The works of improvement shall be constructed in the manner and form and in compliance with the requirements as set forth in the plans and specifications for the project.
5. The City Manager is authorized to sign a purchase order with the lowest responsible qualified bidder.

**PASSED, APPROVED, AND ADOPTED** by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 7th day of July 2010, by the following vote:

**AYES:           BOARDMEMBERS:**  
**NOES:           BOARDMEMBERS:**  
**ABSENT:        BOARDMEMBERS:**

---

**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

---

**JACQUELINE M. HALD, CMC**  
**SECRETARY**



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** JULY 7, 2010  
**ORIGINATING DEPT.:** COMMUNITY DEVELOPMENT DEPARTMENT  
GREG WADE, DIRECTOR *GW*

**SUBJECT:** LETTER OF INTENT AND PROPOSED PORT FUNDING FOR THE ARMY CORPS OF ENGINEERS' SAN DIEGO HARBOR MAINTENANCE DREDGE AND FOR THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) REGIONAL BEACH SAND PROJECT II

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**BACKGROUND:**

On January 14, 2009, City staff received a phone call from the Los Angeles District of the Army Corps of Engineers advising us of an impending San Diego Harbor Maintenance Dredge Project. Included as part of the project was the proposal to deposit approximately 300,000 cubic yards of beach compatible sand in the nearshore just south of the Imperial Beach pier. Subsequently, staff requested that the Army Corps attend the February 4<sup>th</sup> City Council meeting so that the project could be presented to the City Council. On February 4, 2009, the City Council received a presentation of and supported implementation of the proposed project. On October 7, 2009, the City Council received an update on the proposed and impending project. At that meeting, staff advised the City Council that the item would return to them on Wednesday, October 21, 2009, to provide an update on the project and the outcome of various project meetings scheduled since October 7<sup>th</sup>.

On Monday, October 12, 2009, the project was presented to the Tidelands Advisory Committee (TAC). At that meeting, the TAC provided general support for the project. The TAC also raised the following issues or concerns:

- 1) A long-term approach is needed that addresses more permanent solutions for our beach erosion problem.
- 2) A more collaborative effort should be pursued for such projects with all agencies including the EPA.
- 3) If we are going to be pursuing and taking advantage of opportunistic projects in the near term, more lead time is needed to allow for important public/community, TAC and City Council input.
- 4) For any such project the quality and suitability of the material should be scrutinized and, for this project, a debris management plan should be implemented.
- 5) Given the quality of the sediment proposed to be dredged for this project, every effort should be made to place as much of the material in the nearshore (within the depth of

closure) to maximize the potential benefits for beach renourishment.

On October 21, 2009, the project was again presented to the City Council. At that time, staff reported that the project was on hold due to air quality permitting delays along with issues related to the dredges being considered for the project and their inability to appropriately place the sand within the nearshore off Imperial Beach. However, the City Council did support the project if and when it were to proceed subject to implementation of an adequate debris management plan and provided the material was placed close enough to shore to have positive beach renourishment benefits.

## **DISCUSSION:**

Since that time, the project has been modified so that the Army Corps will be bidding out the contract as an alternative to using the Corps' own dredges. It is now expected that either a hopper dredge equipped to place the material in the nearshore or a clamshell dredge will be used. From a cost perspective, it is likely that the latter (a clamshell dredge) will be used.

As previously reported, there is approximately 300,000 cubic yards of beach-quality sediment that could be dredged from the approach and entrance channel to San Diego Harbor. While the Army Corps has estimated the cost for dredging all of this material at approximately \$4.5 million, they currently have only \$1.5 million budgeted for this project. As such, over the past several months, the Army Corps has sought additional non-federal funding in order to carry out as much of the project as possible. The Army Corps approached both the City of Imperial Beach and the Port of San Diego seeking any possible assistance. Through these discussions, the idea of using some of the \$1.8 million previously budgeted in the Port's Capital Development Program (CDP) for the Army Corps Imperial Beach – Silver Strand Shoreline Project (the large federal shoreline protection and beach renourishment project) for this harbor maintenance dredge project was raised. City staff was responsive to this idea with the understanding that the Army Corps would then establish a long-term arrangement with the City of Imperial Beach that would provide for all beach-compatible sand dredged from the San Diego Harbor Entrance Channel during routine maintenance to be placed in the nearshore off Imperial Beach.

At the City Council Workshop on May 11, 2010, City staff advised the Council of this idea. Staff further advised the Council that it intended to request that the Port maintain the \$1.8 million in their CDP with the idea of reallocating the funds to support both the Harbor Entrance Channel Dredge Project as well as SANDAG's Regional Beach Sand Project (RBSP) II. Consequently, a letter was sent from the City Manager to the Port outlining this request (see Attachment 1). In response to that request, the Port ultimately budgeted only \$1 million for both projects with up to \$300,000 to be used toward the Army Corps Harbor Entrance Channel Dredge Project, with the stipulation that these funds only be used to pay for the incremental cost associated with transporting the sand down to Imperial Beach as opposed to Coronado.

In order to provide these funds, the Army Corps is requesting a Letter of Intent (LOI) from the City of Imperial Beach to enter into a Memorandum of Agreement (MOA) for participation in the project. Staff is seeking authorization for issuance of that letter, a copy of which is included in Attachment 2. Should the City Council authorize issuance of the LOI, an MOA will then need to be executed between the City and the Army Corps. Staff intends to bring the MOA back to the City Council on July 21, 2010, for consideration. Additionally, the Port has indicated that it will also require a Memorandum of Understanding (MOU) between the Port and the City for the use of these Port funds. It is anticipated that this MOU will be presented to the City Council either concurrently with the MOA on July 21, 2010, or separately on August 4, 2010. The MOU would then go to the Board of Port Commissioners for their approval.

## SANDAG Regional Beach Sand Project II

Also at the Workshop held on May 11, 2010, the City Council was advised that the letter to the Port of San Diego would include a request to allocate a portion of Port funds towards SANDAG's RBSP II. Because it appears that federal funding of the larger Army Corps Imperial Beach – Silver Strand Shoreline Project is, at best, quite uncertain, City staff is recommending that the City approach the State Department of Boating and Waterways (DBW) about the reallocation of the \$4.2 million of State funding currently under contract for the larger Army Corps project towards the RBSP II as this project is both imminent and already almost entirely funded. As this \$4.2 million will require a local match of approximately \$735,000, the request to the Port is to use a portion of the CDP funds set aside for Imperial Beach Sand Replenishment to cover this local share. The Port has agreed to this request and has budgeted \$700,000 for this purpose. As such, staff is also seeking City Council support to approach the DBW about the reallocation of the \$4.2 million and to use \$700,000 of Port funds for the RBSP II.

### ENVIRONMENTAL IMPACTS:

The actions for which staff are seeking authorization from the City Council are not, in and of themselves, subject to CEQA review. The Army Corps Harbor Entrance Channel Dredge Project has prepared both an Environmental Assessment and a Supplemental Environmental Assessment for this project, the findings of which will be presented and discussed at the City Council meeting on July 21, 2010.

### FISCAL IMPACT:

There is no direct fiscal impact to the City.

### DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council:

1. Authorize the issuance of a Letter of Intent to enter into a Memorandum of Agreement between the City of Imperial Beach and the Department of the Army for participation in the San Diego Harbor Maintenance Dredging Project;
2. Support the use of Port District funds for the San Diego Harbor Maintenance Dredging Project; and
3. Support the idea of approaching the State Department of Boating and Waterways about the possibility of re-scoping the \$4.2 million of Public Beach Restoration funds to the San Diego Association of Governments (SANDAG) Regional Beach Sand Project II; and
4. Support the use of approximately \$700,000 of Port District funds towards the local share of the State Department of Boating and Waterways funds.

### CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

Attachments: 1. Letter to the Port of San Diego dated May 18, 2010  
2. Draft Letter of Intent to the Army Corps of Engineers, Colonel Magness



## City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

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May 18, 2010

Charles Wurster, CEO  
Port of San Diego  
PO Box 120488  
San Diego, CA 92112-0488  
3165 Pacific Highway  
San Diego, Ca. 92101

**SUBJECT: PORT CAPITAL DEVELOPMENT PROGRAM FOR 2009-2013 – \$1.8 MILLION FOR IMPERIAL BEACH SAND REPLENISHMENT**

Dear Mr. Wurster:

For many years the City of Imperial Beach has worked vigorously to preserve one of its most precious economic and environmental resources – its beach. Over the years, the significant coastal erosion experienced in Imperial Beach has necessitated the implementation and planning of a variety of beach replenishment projects in order to combat the depletion of sand supply and impact to sediment transport caused by projects such as the Barrett, Morena and Rodriguez dams on the Tijuana River and the Zuniga Jetty at San Diego Harbor. Sand Replenishment is important to protect public, Port and private investments along the coast such as streets, street ends, Dunes Park and Pier Plaza. Obviously, the beach is also an important regional recreational asset. The City of Imperial Beach, therefore, has been and is currently involved in several beach replenishment efforts.

For the largest of these projects, the Army Corps Imperial Beach – Silver Strand Shoreline Project, which would place approximately 1.6 million cubic yards of sand on our beach at initial construction, the Port allocated \$1.8 million in its 2009-2013 Capital Development Program to be used towards the local share of this federal project. The City of Imperial Beach has been and is currently under contract with the State Department of Boating & Waterways (DBW) for \$4.2 million which would also be used toward the project's local share for initial construction. Given the federal funding uncertainties of this project, however, the City has also been actively involved in pursuing other more imminent opportunities for beach replenishment. Two such projects that would provide Imperial Beach with more immediate and vital beach replenishment and shoreline protection benefits are:

1. **Army Corps/Coast Guard San Diego Harbor Maintenance Dredge** – this project is a regular maintenance dredge of the approach channel to San Diego Harbor. There is approximately 300,000 cubic yards of beach quality material that could be dredged from the approach channel to San Diego Harbor and placed in the nearshore off Imperial Beach that would provide significant beach replenishment and shoreline protection benefits. This project also has a direct

and obvious benefit to San Diego Harbor operations. The Army Corps has recently combined this effort with the Coast Guard's Regular maintenance dredge of their Mooring Ballast Point facility where there is approximately 26,000 cubic yards of beach quality material also proposed for placement in the nearshore off Imperial Beach. Despite the combining of these projects, the Army Corps' limited funding available for this project (approximately \$1.5 million) will only allow for the dredging of between 100,000 to 150,000 cubic yards of material from the approach channel. Our request and recommendation, therefore, would be to allocate up to \$1.1 million of the \$1.8 million previously allocated for Imperial Beach Sand Replenishment to this project to allow the Corps to dredge more sand during this maintenance dredging operation and place it in the nearshore off Imperial Beach. This project is scheduled for construction this fall.

- 2. San Diego Association of Governments (SANDAG) Regional Beach Sand Project (RBSBP) II** – this project is a replication of the original RBSBP completed in 2001 that brought approximately 2.1 million cubic yards of beach sand directly to the region's beaches. During the original project, Imperial Beach received 120,000 cubic yards of sand placed on its beach, which was funded in part by the Port of San Diego. Currently, SANDAG is exploring various alternatives that would allow each participating city in RBSBP II the ability to increase the amount of sand it would receive. Due to the federal funding uncertainties of the larger Army Corps project mentioned above, the City of Imperial Beach has discussed with both the DBW and SANDAG the possibility of allocating the \$4.2 million of DBW funding currently under contract for the larger federal project to the RSBP II project to allow significantly more sand to be placed directly on the shoreline of Imperial Beach. This would allow an increase from 120,000 to 470,000 cubic yards of sand to be placed directly on the City's shoreline. Because the RSBP II has already been funded with other DBW and local funding, this project is a tangible and imminent project for which the reallocation of the \$4.2 million would have a more immediate benefit and impact. The DBW funding, however, also requires a 15% local match. Our request and recommendation, therefore, would be to allocate up to \$700,000 of the \$1.8 million previously allocated for Imperial Beach Sand Replenishment to this project to provide the required local match.

The importance of the preservation and enhancement of our City's primary economic, environmental and recreational resource, our beach, cannot be overstated. Its importance to the Port should also not be overlooked, especially when projects that directly benefit and enhance the City's Beach also benefit the whole region, including Port member cities, Port operations, as well as Port-funded facilities and improvements. The Port will also leverage its investment dollars by joining in these projects. The City of Imperial Beach requests, therefore, that the Port continue to allocate \$1.8 million of funding to Imperial Beach Sand Replenishment in its 2009-2013 Capital Development Program as discussed above.

If you have any questions regarding this information, please do not hesitate to contact me.

Sincerely,



Gary Brown  
City Manager

C: Michael Bixler, Port of San Diego  
Imperial Beach City Council  
Stephen Kirkpatrick, Port of San Diego

July 7, 2010

Colonel Thomas H. Magness, USA  
Commander  
Los Angeles District  
U.S. Army Corps of Engineers  
P.O. Box 532711  
Los Angeles, CA 90053-2325

**SUBJECT: LETTER OF INTENT TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF IMPERIAL BEACH FOR THE SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT**

Dear Colonel Magness:

On Wednesday, July 7, 2010, the City Council of the City of Imperial Beach authorized the issuance of this Letter of Intent (LOI) to enter into a Memorandum of Agreement (MOA) with the Army Corps of Engineers for participation in the above-referenced project. Specifically, the City of Imperial Beach has received authorization from the Port of San Diego to expend up to \$300,000 of Port funds towards the incremental cost of transporting beach-quality sand dredged from the San Diego Harbor Entrance Channel to a nearshore deposit site off Imperial Beach. As has been discussed and agreed to between the Army Corps of Engineers and City of Imperial Beach, the placement of this material will be subject to the implementation of an appropriate debris management plan. It is our further understanding that the Army Corps' intent is to place all future beach-compatible sediment dredged from the San Diego Harbor Entrance Channel within the nearshore off Imperial Beach.

The MOA is currently scheduled to be considered by the City's Tidelands Advisory Committee (TAC) on Monday, July 12, 2010, and by the City Council of the City of Imperial Beach at their regular meeting on Wednesday, July 21, 2010. It is City staff's intention to recommend that the City Council authorize the City Manager to enter into the MOA subject to specific conditions including the implementation of the afore-mentioned debris management plan.

The City of Imperial Beach thanks you for your efforts to provide the City with this much-needed beach renourishment opportunity and looks forward to working with you in the future on other such projects.

Sincerely,

Jim Janney  
Mayor





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GARY BROWN, CITY MANAGER**

**MEETING DATE: JULY 7, 2010**

**ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT  
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR  
DAVID GARCIAS, CODE COMPLIANCE OFFICER**

**SUBJECT: CODE ENFORCEMENT – WEED & RUBBISH ABATEMENT**

A handwritten signature in black ink, appearing to be "Greg Wade", is written over the typed name of the Community Development Director.

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**BACKGROUND:**

Among other responsibilities, the Code Compliance division handles complaints and conducts inspections regarding the existence of weeds, rubbish, refuse, and unsightly materials on residential and commercial properties. Abatement notices are sent to parcel owners within the City deemed by Code Compliance staff to be a public nuisance and dangerous to the public health and safety.

The California Government Code (Sect. 39560) has been adopted into the Imperial Beach Municipal Code (Chapter 8.40 – Weed & Rubbish Abatement) and sets out the following procedure for the abatement of weeds and rubbish.

1. Staff shall identify and present to City Council those properties which constitute a public nuisance as defined in the California Government Code requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement. A date shall be set for a public hearing before the City Council to consider the abatement of the nuisance violations.
2. After passage of a resolution declaring a nuisance, staff shall cause notices to be conspicuously posted on or in front of the property on which the nuisance exists. Staff shall both post and mail a notice to the property owner. The notices shall be posted at least five days prior to the date of the public hearing before the City Council.
3. City Council shall conduct a public hearing to hear and consider all objections to the proposed removal of weeds, rubbish, refuse, and dirt. At the conclusion of the hearing, the City Council shall by motion or resolution allow or overrule any objections. If after the public hearing the City Council determines that public nuisances exist, the City Council shall direct staff to proceed with and perform the necessary abatement. City Council shall order staff to abate the nuisance by having the weeds, rubbish, refuse, and dirt removed.
4. Staff shall keep an account of the cost of abatement on each separate parcel of land where the work is conducted, and shall submit it to the City Council at completion of all abatement for their consideration.

5. The City Council shall hear the abatement cost report and any objections of the property owners liable to be assessed for the abatement costs. The City Council may modify the report if it is deemed necessary. The City Council shall then confirm the report by motion or resolution to assess the individual properties. The total amounts would constitute a special assessment against the lot or parcel of land to which it relates, and the cost would be placed as a lien on the property for the amount of the assessment. Assessments shall be billed to the property owners and remitted to the City within thirty (30) days of adoption of the resolution. If the costs are not paid, staff shall record a notice of lien in the office of the county recorder, and the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and, in case of delinquency, subject to the same penalties and procedures as provided for ordinary municipal taxes. All laws of the state applicable to the levy, collection, and enforcement of municipal assessments would apply. The assessment would also be a personal obligation of the property owner.

### **DISCUSSION:**

The following properties have been inspected by staff and identified with the below list of violations of the Imperial Beach Municipal Code. The properties were issued Notices of Violations, and Administrative Citations assessing fines. To date, staff has not heard from property owners, and the violations on the properties have not been abated.

- **IBMC 1.16.010.G.**      **Overgrown vegetation.**
- **IBMC 1.16.010.H.**      **Dead or hazardous vegetation.**
- **IBMC 1.16.010.U.**      **“Visual blight”, unsightly vegetation.**
- **IBMC 8.50.050.P.**      **All premises on which there are any “weeds,” rubbish or refuse found upon parkways, sidewalks, or private property within the city.**

### **PROPERTIES:**

1. **1174 Florida St (APN. 633-011-11)**; Owner: Barron, Manuel (details see table “A”)
  - a. February 24, 2009: Citizen Complaint received identifying above violations.
  - b. March 3, 2009: Notice of Violation issued to property owner to abate violations.
  - c. March 23, 2009: Staff inspected and observed the violations were abated.
  - d. June 1, 2009: Citizen Complaint received identifying above violations.
  - e. June 3, 2009: Notice of Violation issued to property owner to abate violations.
  - f. July 1, 2009: Staff inspected and observed the violations were abated.
  - g. February 23, 2010: Citizen Complaint received identifying above violations.
  - h. March 1, 2010: Staff issued Admin. Citation to property owner to abate violations.
  - i. March 29, 2010: Inspection, staff observed a notice of default posted on the lot.
  - j. May 11, 2010: Citizen Complaint received identifying above violations.
  - k. June 7, 2010: Citizen Complaint received identifying above violations.
2. **1019 Iris Ave (APN. 632-323-06)**; Owner: Raczkowski, Richard (details see table “A”)
  - a. February 9, 2010: Citizen Complaint received identifying above violations.

- b. February 16, 2010: Notice of Violation issued to property owner to abate violations.
  - c. March 9, 2010: Admin. Citation issued to property owner to abate violations.
3. **336-338 Daisy Ave (APN. 625-291-05)**; Owner: Stupeck, Mary K. (details see table "A")
- a. April 26, 2010: Citizen Complaint received identifying above violations.
  - b. April 28, 2010: Notice of Violation issued to property owner to abate violations.

Staff is requesting City Council declare that weeds growing upon and in front of the above listed properties are a public nuisance and authorize staff to proceed with weed and rubbish abatement at the non-compliant properties.

**FISCAL IMPACT:**

Abatement costs may vary. All costs shall be assessed to the individual properties/property owners and the amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes on the next regular tax bill levied against the individual parcels for municipal purposes.

Further, the City may assess \$500.00 in administrative costs per property for nuisance abatement proceedings pursuant to Imperial Beach Municipal Code Sections 1.16.240.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 2010-6912 declaring that weeds growing on and in front of the properties listed above constitute a public nuisance and directing staff to proceed with abatement of the violations.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

Attachments:

- City Council Resolution #2010-6912
- Table "A"



**RESOLUTION NO. 2010-6912****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, FINDING AND DECLARING THAT WEEDS, BRUSH, RUBBISH AND REFUSE UPON OR IN FRONT OF SPECIFIED PROPERTY IN THE CITY ARE A SEASONAL AND RECURRENT PUBLIC NUISANCE, AND DECLARING ITS INTENTION TO PROVIDE FOR THE ABATEMENT THEREOF AND SCHEDULE A WEED AND RUBBISH ABATEMENT PUBLIC HEARING TO HEAR OBJECTIONS ON JULY 21, 2010**

**WHEREAS**, Among other responsibilities, the Code Compliance division handles complaints and conducts inspections regarding the existence of weeds, rubbish, refuse, and unsightly materials on residential and commercial properties. Abatement notices are sent to parcel owners within the City deemed by Code Compliance staff to be a public nuisance and dangerous to the public health and safety; and

**WHEREAS**, The California Government Code (Sect. 39560) has been adopted into the Imperial Beach Municipal Code (Chapter 8.40 – Weed & Rubbish Abatement) and sets out the following procedure for the abatement of weeds and rubbish; and

**WHEREAS**,

1. Staff shall identify and present to City Council those properties which constitute a public nuisance as defined in the California Government Code requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement. A date shall be set for a public hearing before the City Council to consider the abatement of the nuisance violations.
2. After passage of a resolution declaring a nuisance, staff shall cause notices to be conspicuously posted on or in front of the property on which the nuisance exists. Staff shall both post and mail a notice to the property owner. The notices shall be posted at least five days prior to the date of the public hearing before the City Council.
3. City Council shall conduct a public hearing to hear and consider all objections to the proposed removal of weeds, rubbish, refuse, and dirt. At the conclusion of the hearing, the City Council shall by motion or resolution allow or overrule any objections. If after the public hearing the City Council determines that public nuisances exist, the City Council shall direct staff to proceed with and perform the necessary abatement. City Council shall order staff to abate the nuisance by having the weeds, rubbish, refuse, and dirt removed.
4. Staff shall keep an account of the cost of abatement on each separate parcel of land where the work is conducted, and shall submit it to the City Council at completion of all abatement for their consideration.
5. The City Council shall hear the abatement cost report and any objections of the property owners liable to be assessed for the abatement costs. The City Council may modify the report if it is deemed necessary. The City Council shall then confirm the report by motion or resolution to assess the individual properties. The total amounts would constitute a special assessment against the lot or parcel of land to which it relates, and the cost would be placed as a lien on the property for the amount of the assessment. Assessments shall be billed to the property owners and remitted to the City within thirty (30) days of adoption of the resolution. If the costs are not paid, staff shall record a notice of lien in the office of the county recorder, and the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and, in case of delinquency, subject to the same penalties and procedures as provided for ordinary municipal taxes. All laws of the

state applicable to the levy, collection, and enforcement of municipal assessments would apply. The assessment would also be a personal obligation of the property owner; and

**WHEREAS,** The following properties have been inspected by staff and identified with the below list of violations of the Imperial Beach Municipal Code. The properties were issued Notices of Violations, and Administrative Citations assessing fines. To date, staff has not heard from property owners, and the violations on the properties have not been abated

- IBMC 1.16.010.G. Overgrown vegetation.
- IBMC 1.16.010.H. Dead or hazardous vegetation.
- IBMC 1.16.010.U. "Visual blight", unsightly vegetation.
- IBMC 8.50.050.P. All premises on which there are any "weeds," rubbish or refuse found upon parkways, sidewalks, or private property within the city.

**PROPERTIES:**

1. **1174 Florida St (APN. 633-011-11)**; Owner: Barron, Manuel (details see table "A")
  - a. February 24, 2009: Citizen Complaint received identifying above violations.
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2. **1019 Iris Ave (APN. 632-323-06)**; Owner: Raczkowski, Richard (details see table "A")
  - a. February 9, 2010: Citizen Complaint received identifying above violations.
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3. **336-338 Daisy Ave (APN. 625-291-05)**; Owner: Stupeck, Mary K. (details see table "A")
  - a. April 26, 2010: Citizen Complaint received identifying above violations.
  - b. April 28, 2010: Notice of Violation issued to property owner to abate violations;and

**WHEREAS**, Staff is requesting City Council declare that weeds growing upon and in front of the above listed properties are a public nuisance and authorize staff to proceed with weed and rubbish abatement at the non-compliant properties; and

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

Section 1. The foregoing recitals are true and correct, and the City Council hereby concurs with the Finding and Declaring that the weeds, brush, rubbish, and refuse upon or in front of the specified property in the City area a seasonal and recurrent public nuisance, and declaring its intention to provide for the abatement thereof and schedule a weed and rubbish abatement public hearing to hear objections on July 21, 2010.

Section 2. The cost of abatement is approved as follows:  
Any work performed by City shall be done at the expense of the owner and the expense of such abatement shall constitute a lien against the property and a personal obligation of the person(s) causing and creating the substandard and nuisance conditions.

Section 3. The City Manager may cause a copy or copies of this Resolution to be conspicuously posted, as the City Manager may deem necessary.

Section 4. The City Clerk is hereby directed to:

1. Mail a copy or copies of this Resolution, by first class mail, to the owner(s) of the above-described property as shown in the last equalized assessment roll;
2. Inform the property owner, by copy of this Resolution, that the time within which judicial review of this decision must be sought is governed by §1094.6 of the California Code of Civil Procedure. The property owner's right to appeal this decision is governed by California Code of Civil Procedure §1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 7<sup>th</sup> day of July 2010, by the following vote:

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>

---

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

---

**JACQUELINE M. HALD, CMC**  
**CITY CLERK**



**Table "A"**

<b>APN</b>	<b>SITE ADDRESS</b>	<b>PROPERTY OWNER</b>	<b>MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>
633-011-11-00	Vacant Lot, 1174 Florida St	BARRON, MANUEL	1180 FLORIDA ST	IMPERIAL BEACH	CA	91932
632-323-06-00	1019 Iris Ave	RACZKOWSKI, RICHARD	PO BOX 22	DESCANSO	CA	91916
625-291-05-00	336-338 Daisy Ave	STUPECK, MARY K	7553 LA JOLLA BLVD	LA JOLLA	CA	92037





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** JULY 7, 2010

**ORIGINATING DEPT.:** PUBLIC SAFETY *MB*

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF IMPERIAL BEACH AND SWEETWATER UNION HIGH SCHOOL DISTRICT FOR SERVICES OF A SPECIAL PURPOSE SCHOOL RESOURCE OFFICER

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**BACKGROUND:**

The City and Sweetwater Union High School District ("SUHSD") first entered into a shared-cost agreement for a Special Purpose School Resource Officer (SRO) in September 1994. This officer was intended to alleviate time and manpower previously expended for school campus response calls by regular contracted law enforcement officers. In summary, the officer duties are the following:

- Provide/schedule campus security
- Be the first response to all law enforcement related matters during school hours
- Assist with the investigation of criminal activity within affected schools
- Present law related information targeted at the students and the faculty
- Participate on the Student Attendance Review Board and attend Student Attendance Review Board meetings
- Document all incidents of crime
- Work with the SUHSD, parent/teacher groups, community agencies, and the City on mutual concerns such as, alcohol and drug use on campus, vandalism, student safety, and other criminal activities.

The Special Purpose School Resource Officer also assists the School District with training and development for violence prevention methods in schools and for crisis response planning.

**DISCUSSION:**

The Memorandum of Understanding between the City of Imperial Beach and SUHSD for a Special Purpose School Resource Officer expires June 30, 2010. The SUHSD and the City desire to renew the MOU. In previous years, SUHSD and the city evenly split the costs for an

Special Purpose School Resource Officer during the school year. This year however, SUHSD has informed city staff that due to their budget constraints, they could only contribute \$60,000 to the total cost of a Special Purpose School Resource Officer. This contribution would be approximately \$20,000 less than in the previous fiscal year. The MOU between the City and SUHSD has been changed to reflect the new amount.

This MOU does not include the summer session or any other events outside of the regular school day where additional costs are incurred by the City. All costs for additional Special Purpose School Resource Officer or Sheriff Deputy manpower is the exclusive responsibility of SUHSD and will be charged, according to Sheriff contract costs, to SUHSD. The 2010-2011 budgets adopted by the Imperial Beach City Council incorporated the continuation of a Special Purpose School Resource Officer.

In prior contract years the school district received full time service from the Special Purpose School Resource Officer for their contract share amount of \$80,000. The amount of \$60,000 represents only 75% of the school's share. Therefore the school district will now receive 75% of the full-time Special Purpose School Resource Officer or 32 hours per week. The remaining time will be utilized by the Imperial Sheriff Department for city related enforcement activities.

**ENVIRONMENTAL IMPACT:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

The annual cost of a Special Purpose School Resource Officer is \$207,972.13. According to the revised MOU, SUHSD will make quarterly payments of \$15,000 for a total of \$60,000. The City will contribute \$147,972 for the SRO. The difference of \$20,000 will be covered by general fund reserves. We may need to eliminate the SRO position in the fiscal year starting on July 1, 2011 if the school cannot assume its share of the current contract costs for the Special Purpose School Resource Officer.

**DEPARTMENT RECOMMENDATION:**

Adopt Resolution No. 2010-6911 authorizing the City Manager to execute the Memorandum of Understanding with Sweetwater Union High School District for the purpose of sharing the costs of a Special Purpose School Resource Officer.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6911
2. Memorandum of Understanding





**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE SWEETWATER UNION HIGH SCHOOL DISTRICT  
AND  
THE CITY OF IMPERIAL BEACH**

**MISSION STATEMENT:** It is the mission of the Sweetwater Union High School District in concert with the Imperial Beach Public Safety Department to provide a safe, secure, orderly teaching and learning environment for all students and staff within the Sweetwater Union High School District and the City of Imperial Beach by protecting life and property.

Ensuring the safety of students and staff on school campuses in Imperial Beach is a priority to the school administration and the Sheriff's Department. Campus security will be increased by the presence of a Special Purpose Officer (deployed as a School Resource Officer (SRO) who will interact with the students in both a positive and proactive manner. A Special Purpose Officer on campus will help improve relations between the Sheriff's Department and the youth of the community. As a result, the Sweetwater Union High School District and the Imperial Beach Sheriff's Department agree to undertake the following responsibilities and expectations to achieve these mutual objectives:

**A. SCHOOL DISTRICT'S ROLE AND RESPONSIBILITY:**

1. Ensure student welfare portal to portal;
2. Develop procedures to handle campus safety issues;
3. Establish and follow procedures for referring School Resource Officer involvement; and
4. Cooperate with and support in a proactive manner with the Imperial Beach Public Safety Department School Resource Officer's efforts to work with students, school personnel, parents and the community

**B. SCHOOL RESOURCE OFFICERS' ROLE AND RESPONSIBILITY:**

1. To provide prevention/intervention by:
  - a. Providing a highly visible uniform sheriff officer presence on the campuses of the Sweetwater Union High School District that are located in Imperial Beach.
  - b. Developing classroom and faculty presentations related to the youth and the law.
  - c. Attending parent conferences/meetings when requested.
  - d. Attending Student Attendance Review Board (S.A.R.B.) meetings.
  - e. Scheduling security activities as needed.
  - f. Being the first response in all law enforcement related matters as they occur during regular school hours.
  - g. Attending various sporting events and school activities as needed for proactive enforcement and interaction.
  - h. Documenting all incidents of crime as per department regulations.

2. To continue to work with:
  - a. Community agencies; and
  - b. Parent/teacher groups as needed throughout the affected schools.
3. To assist investigative personnel of the Imperial Beach Sheriff's Department who are assigned to the various school sites with continuing an ongoing investigation and preliminary investigations of criminal activity within the affected schools.
4. Continue to work with school staff and District personnel in matters of mutual concern such as:
  - a. Education.
  - b. Prevention and intervention in the areas of alcohol and drug use on campus.
  - c. Safety of students and staff on campus.
  - d. Gang-related violence and crime.
  - e. Campus intrusion, and loss and/or damage to property.

#### **C. TIME FRAME**

This Memorandum of Understanding shall remain in effect for 12 months commencing July 1, 2010 and ending June 30, 2011. Either party shall have the right to cancel this Memorandum of Understanding upon 90 days advance written notice during the term of this agreement.

#### **D. SPAN OF CONTROL/JURISDICTION**

Prevention/education/training/proactive activities will take place at Mar Vista High School and at public meeting places within the respective community as it relates to the Sweetwater Union High School District activities. The officer will remain under the direction and control of the Imperial Beach Sheriff's Department.

#### **E. RESOURCE**

Resource and local management will be coordinated at:

Sweetwater Union High School District  
Attn: Dianne Russo, Chief Financial Officer  
1130 Fifth Avenue  
Chula Vista, CA 91911  
(619) 585-6265

City of Imperial Beach  
Attn: Chief  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932  
(619) 423-8300

**F. COST**

One Officer will be funded jointly by the City of Imperial Beach and the Sweetwater Union High School District.

The Sweetwater Union High School District will contribute to this effort, an amount not to exceed \$60,000.

This Memorandum of Understanding will be effective July 1, 2010. Upon execution of this Memorandum, the Sweetwater Union High School District, upon invoicing, will pay the City of Imperial Beach, the agreed amount of \$60,000 in quarterly installments of \$15,000. If the agreement is canceled as herein permitted, the City shall return forthwith to the District the portion of such payment allocable to the period of the term subsequent to the effective date of cancellation. The District will pay all costs incurred by the City up to the date of cancellation.

The school district will receive 75% of the full-time SRO or 32 hours per week. The remaining time will be utilized by the Imperial Sheriff Department for city related enforcement activities.

This MOU does not include the summer session or any other events outside of the regular school day where additional costs are incurred by the City. All costs for additional SRO or Sheriff Deputy manpower is the exclusive responsibility of SUHSD and will be charged, according to Sheriff contract costs as specified in the contract for services between the San Diego County Sheriff's Department and the City of Imperial Beach.

**G. NO INDEPENDENT BASIS FOR LIABILITY**

Nothing herein shall create, by this or other Understanding between the parties, an independent basis for liability of the City to either the District or to a third party for failing to respond or for responding to a call for sheriff services in a dilatory or negligent manner. The City's liability, if any it may have, shall be that as determined by law without regard to the existence of this Agreement.

SWEETWATER UNION  
HIGH SCHOOL DISTRICT

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Gary Brown, City Manager

**ORIGINATING  
DEPT.:** Gary Brown, City Manager  
Jennifer M. Lyon, City Attorney

**MEETING DATE:** July 7, 2010

**SUBJECT:** Response to June 7, 2010 Grand Jury Report Entitled  
"Medical Marijuana in San Diego"

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**BACKGROUND**

On June 7, 2010, the San Diego County Grand Jury issued a report entitled "Medical Marijuana in San Diego." The report described the current state of federal and state laws pertaining to medical marijuana dispensaries, acknowledging that the legal framework surrounding this issue is uncertain. The Grand Jury surveyed the response of various cities within the County to the issue.

The Grand Jury also made various findings and recommendations, some of which apply to the City of Imperial Beach. The report made recommendations to all cities within San Diego County, the County, the Sheriff's Department and the District Attorney. Under the Penal Code, when the Grand Jury requires a response to a report, a public agency has 90 days to file a response.

In a response to a grand jury report, the City has to perform two functions. First, as to those findings that may apply to it, the City has to either agree with the finding or disagree with it. If the City disagrees, it has to offer an explanation for this disagreement.

The second obligation is to respond to each recommendation. The City has to respond to each recommendation in one of four ways: (1) that the recommendation has already been implemented; (2) that the recommendation will be implemented, along with a timeline; (3) that the recommendation needs more study, which has to be completed in six months from the report's publication; or (4) that the recommendation will not be implemented because it is unwarranted or unreasonable, with an explanation of why.

The Grand Jury has the authority to compel the City to respond to its report, but it has no authority to make the City follow its policy recommendations. The City's sole responsibility is to file a timely response meeting the criteria listed above.

## **DISCUSSION**

### *Reasons for the Response*

The grand jury's report comes at an unfortunate time for local governments in general and for the City of Imperial Beach in particular. At present, cities seeking to regulate medical marijuana operate in a thicket of legal uncertainty. Under federal law, medical marijuana is illegal in its entirety. By contrast, under state law, qualified patients will not be prosecuted for their use or possession of medical marijuana. Also, a case is pending in which a court will decide the extent of a public agency's land use authority over cooperatives and collectives. The result of this legal uncertainty is that at present cities do not know what they legally can or cannot do about medical marijuana dispensaries.

The report comes at a particularly bad time for the City of Imperial Beach. With Ordinance No. 2009-1090, the Council passed a moratorium on medical marijuana dispensaries, with the hope that during the moratorium period the legal landscape would clear up. It did not, and the Council extended the moratorium with Ordinance No. 2009-1091. The grand jury report calls for answers within 90 days of its publication, or if more study is needed, within 6 months of its publication. During the next six months, it is anticipated that two significant developments will occur. First, the *Anaheim* case concerning local governments' land use authority over dispensaries should be issued, and second, in November voters will decide whether marijuana should be legalized for medical and non-medical purposes. Reviewing the outcomes of the opinion and initiative are helpful components to making rational policy on medical marijuana regulation.

Once the opinion and initiative have been decided, the City would still need to prepare and pass an ordinance, and if the ordinance regulates land use, it may need to seek approval from the Coastal Commission. If taxes are involved, the City may need voter approval.

For these reasons, the time frame envisioned by the Grand Jury is not reasonable for the City of Imperial Beach, whether the City decides to follow the Grand Jury's regulatory policy regulations or not. These factors affect the recommended response attached to this staff report.

### **The Grand Jury's Findings**

The Grand Jury made eleven findings, of which five appear to relate to the City of Imperial Beach.

Finding 5 says that adopting "cost-neutral" zoning and land use ordinances are effective for licensing, regulating, and inspecting dispensaries. It is recommended that the City

Council disagree with this finding based on the fact that the City of Imperial Beach has not fully analyzed the way such an ordinance would affect the City of Imperial Beach. Also, no city in the county successfully regulates dispensaries through land use or zoning laws, except via complete bans on dispensaries. Further, any business regulations needed for “vice” type businesses (massage, adult entertainment, etc.) involve business licensing laws, independent of land use regulations. Therefore, based on these uncertainties, at this time, the City must disagree.

Finding 6 by the Grand jury is that the City of San Diego’s medical marijuana task force “may” serve as a good model for other cities to adopt. It is recommended that the Council agree with this finding. The City of San Diego thus far has not adopted a regulatory ordinance, and city council committees have not adopted the city’s medical marijuana task force recommendations wholesale. Nonetheless, they “may” serve as a model for some cities.

Finding 7 is that auditing of dispensaries is not occurring in the County. It is recommended that the Council agree with this finding since the City is not aware of any entity currently charged with this function. If the City of Imperial Beach decides to regulate dispensaries rather than banning them, auditing will likely be a component of those regulations.

Finding 10 from the Grand Jury is that the current moratorium has the effect of denying legitimate, qualified patients access to medical marijuana. It is recommended that the City Council disagree with this finding. The Grand Jury report did not indicate that it interviewed any person specifically in Imperial Beach, did not indicate that it ascertained that anyone in Imperial Beach is a legitimately qualified medical marijuana patient, and did not demonstrate that anyone in Imperial Beach who had a medical need for marijuana was unable to obtain it. Additionally, Imperial Beach residents could likely obtain medical marijuana in other locations.

Finding 11 from the Grand Jury is that imposing regulatory fees and costs could impose a hardship on smaller collectives and cooperatives. It is recommended that the Council disagree with this finding because the Grand Jury did not audit any dispensary’s finances, much less compare the burden of paying regulatory fees on dispensaries to the burden on local governments of regulating dispensaries.

### *Grand Jury Recommendations*

The Grand Jury made three recommendations to the City of Imperial Beach, and the City is obligated to respond.

First, the Grand Jury called on the City to pass a cost-neutral ordinance licensing, regulating, and monitoring dispensaries, and limiting the number of dispensaries. Because of the rapid time frame in which the Grand Jury report wants this request implemented and the City Council’s most recent direction that it wanted to extend the moratorium, it is recommended that the City not implement this recommendation at this time. The recommendation is unreasonable for the City to implement at present because: (1) the *Anaheim* case is still pending; (2) the initiative to legalize marijuana is

still pending; and (3) any ordinance could require Coastal Commission approval and possibly voter approval. These will not be accomplished within the 90-days-from-publication requirement for responding to Grand Jury recommendations. The City might decide to adopt an ordinance along these lines, but in light of the current legal uncertainty about marijuana's status, doing so would be unreasonable.

The Grand Jury's second recommendation is that the City adopt regulations allowing it to shut down unlawful dispensaries. The City has already implemented this recommendation. Currently, under Chapters 1, 4, and 17 of the Imperial Beach Municipal Code, the City may take any number of enforcement actions against any business operating in violation of the City's zoning, business licensing, or other codes. These include pursuing injunctions in court to shut down improper businesses.

The final recommendation is that, once an ordinance is adopted, the City should lift its moratorium. For the same timing reasons discussed above for the first recommendation, and given the fact that the City has not yet determined its policy approach to this matter, it is suggested that the City Council decline to implement this recommendation at present because the allotted timeframe is unreasonable.

#### **ENVIRONMENTAL DETERMINATION:**

This project is exempt from the California Environmental Quality Act (CEQA) because it is not a project as defined in Section 15378.

#### **FISCAL IMPACT:**

N/A

#### **CITY MANAGER'S RECOMMENDATION:**

Staff Recommends the Mayor and City Council adopt Resolution No. 2010-6914, adopting the attached response to the Grand Jury, that the Mayor sign the response, and that the City Clerk forward the response to the Presiding Judge of the Superior Court.

  
\_\_\_\_\_  
Gary Brown, City Manager

#### **Attachments:**

1. Grand Jury Report
2. Resolution No. 2010-6914
3. Draft Letter

# MEDICAL MARIJUANA IN SAN DIEGO

## *INTRODUCTION*

The 2009/2010 San Diego County Grand Jury received more complaints on the subject of medical marijuana than on any other subject. The common thread of these complaints is the lack of clear and uniform guidelines under which qualified medical marijuana patients can obtain marijuana. The threat of reprisals against these patients and their suppliers by law enforcement agents was also a common concern. The collateral issue is the proliferation of storefront medical marijuana “dispensaries” in the City of San Diego, many of which community members allege are operating illegally. These issues have been compounded by a legislative/judicial quagmire of conflicting federal, State and local regulations and court decisions. The 2009 California Police Chief’s Association “white paper” refers to the catch-22 in which local public entities are ensnared in trying to reconcile California’s medical marijuana laws on one hand and federal regulations on the other.

This report seeks to balance the concerns of patients for whom the use of medical marijuana has legally and legitimately been recommended with the concerns of residents disturbed by the activities that surround marijuana stores opening in their communities. This balance can be achieved by the adoption of enforceable ordinances for the licensing and monitoring of a limited number of medical marijuana collectives and cooperatives in the eighteen cities and the unincorporated areas of the County. These collectives and cooperatives should be operated in strict accordance with the regulations in Senate Bill 420 (in effect as of January 1, 2004) and the guidelines set forth by the State Attorney General in August 2008.

Until such ordinances can be put into effect, the Grand Jury is suggesting the enactment of an immediate moratorium on the opening of additional storefront dispensaries in the City of San Diego.

The San Diego County District Attorney’s Office has coordinated the execution of search warrants in the current fiscal year on a number of storefront dispensaries allegedly operating illegally. There are some operators of collectives and cooperatives who are trying to operate within the law. Consequently, the Grand Jury believes that the District Attorney’s Office should publish a position paper to outline what it considers the legal and illegal operation of medical marijuana collectives and cooperatives and should also establish a Medical Marijuana Advisory Council as a forum to engage in an ongoing dialogue with the operators, patients, and members of the public.

**Disclaimer:** The report does not endorse or condone the illegal use of drugs. The report does not address the issue of whether marijuana has any medicinal value. California law is clear: the cultivation and possession of marijuana is not punishable under State law when necessary for medical purposes and authorized by a physician.

## ***INVESTIGATION***

The Grand Jury:

- Researched applicable federal, State and local laws and court cases
- Researched the laws, regulations and guidelines of the fourteen other states that have medical marijuana programs, with the objective of identifying common successful best practices
- Researched practices in other selected cities and counties in the State
- Obtained and analyzed regulations for the County of San Diego and each of its eighteen cities
- Monitored the activities and recommendations of the City of San Diego's Medical Marijuana Task Force
- Interviewed selected Medical Marijuana Task Force members and elected officials
- Interviewed community members who have identified possibly illegal dispensaries in their neighborhoods
- Interviewed operators of marijuana collectives and visited two collectives
- Interviewed County and City health and medical officials
- Interviewed law enforcement personnel and reviewed the 2009 *White Paper on Medical Marijuana Dispensaries* published by the California Police Chiefs Association
- Interviewed medical marijuana patients
- Interviewed four attorneys with experience in medical marijuana issues
- Observed operations of the Medical Marijuana ID Card Program operated by the County Health and Human Services Agency
- Reviewed and partially adapted the report of the 2004/2005 Grand Jury entitled *The Politics of Medical Marijuana*
- Researched the web sites of the Medical Review Board of California and the Osteopathic Review Board of California

**Issues Identified:** The purpose of the study is to identify the steps the County of San Diego and its eighteen cities have taken to implement the State of California's Compassionate Use Act of 1996. As a result of the Grand Jury's investigation, the following issues have been identified:

- Lack of uniform guidelines for patient eligibility and identification
- Lack of uniform guidelines for the licensing and regulation of operators of cooperatives, collectives and "dispensaries"
- Moratoria and outright bans on medical marijuana distribution outlets in many communities in San Diego County
- Conflicting federal, State and local regulations
- Community outrage and possible criminal activity associated with unregulated storefront and mobile "dispensaries"
- Large scale cash transactions not subject to audit; potential for tax fraud
- Limited number of physicians prescribing marijuana; incomplete diagnoses based on patient's reporting of symptoms
- Lack of dialogue between law enforcement agencies and patient advocacy groups

## ***DISCUSSION***

### **Federal Law: Marijuana is a Schedule I Controlled Substance**

The Controlled Substances Act, 21 U.S.C. 801 *et seq.*, makes it unlawful to “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense” any controlled substance. It is also a crime to possess any controlled substance except as authorized by the Act. Persons who violate federal law are subject to criminal and civil penalties.

The restrictions that the Controlled Substances Act places on the manufacture, distribution, and possession of a controlled substance depend upon the schedule in which the drug has been placed. Since the Controlled Substances Act was enacted in 1970, marijuana has been classified as a Schedule I controlled substance.

According to 21 U.S.C. 812(b) (1) (A)-(C), a drug is listed in Schedule I, the most restrictive schedule, if the following findings have been made:

- “(A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.”

Under federal law, it is unlawful to manufacture, distribute, dispense, or possess marijuana or any other Schedule I drug, except as part of a strictly controlled research project that has been registered with the Drug Enforcement Administration and approved by the Food and Drug Administration.

In the case of *Gonzales v. Raich*, the United States Supreme Court declared that, despite the attempts of several states to legalize marijuana partially, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. The Controlled Substances Act does not recognize the medical use of marijuana. As such, there are no exceptions to its illegality. Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. These attempts have all failed.

The June 6, 2005 *Gonzales v. Raich* decision upheld the federal ban on the use of marijuana even where states approve its use for medicinal purposes. The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. The government argued that if a single exception was made to the Controlled Substances Act, it would become unenforceable in practice.

A dissenting opinion in the *Gonzalez v. Raich* case stated "a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

While the Drug Enforcement Administration has been very active in raiding medical marijuana dispensaries in California in the recent past, and arresting and prosecuting their principal operators under federal law in selected cases, the United States Attorney General announced in March 2009 a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. Only those medical marijuana dispensaries that are suspected fronts for drug trafficking will be targeted for prosecution. The Federal Department of Justice has new guidelines that allow for non-enforcement of the federal ban in some situations:

"It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal."

It remains to be seen what standards and definitions will be used to determine what indicators will constitute a drug trafficking operation suitable to trigger investigation and enforcement under these new federal guidelines.

The Grand Jury investigation revealed that law enforcement personnel in San Diego County attribute the recent spike in the opening of storefront medical marijuana dispensaries to the apparent relaxation of enforcement at the federal level.

### **California Law**

**Proposition 215:** On November 5, 1996, the voters of California passed Proposition 215. This initiative measure added Section 11362.5 to the California Health and Safety Code and is also known as the Compassionate Use Act of 1996. The purposes of the Act are "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana . . . and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." Caregivers have the same right to legal possession, as does the patient. A primary caregiver is defined by the Act as "the individual designated by the person exempted under this section who has *consistently assumed responsibility for the housing, health, or safety of that person.*" [Emphasis added]

An analysis of the Compassionate Use Act reveals that it did not address several issues that became problem areas during its implementation. A fundamental weakness of the Act is that while it exempts qualified patients and their primary caregivers from State criminal prosecution, it does not address **how** those qualified patients obtain their

marijuana. Not all patients or primary caretakers are able to cultivate marijuana on their own due to the nature of their illness and limitations of their housing situation, and so they need an external source of supply. The words collaborative, collective and dispensary do not appear in the Act. The Act also does not address limits on the amount of marijuana that patients or caregivers are allowed to possess. It does not address the subject of medical marijuana identification cards or other documentation by which qualified patients could establish to law enforcement personnel their exemption from prosecution.

The Compassionate Use Act is also subject to differing interpretations in the area of patient eligibility. Physicians may recommend marijuana for persons whose health would benefit from the drug in the treatment of such conditions as cancer, anorexia, AIDS, glaucoma, arthritis and other specified conditions. However, physicians may also recommend marijuana to treat “any other illness for which marijuana provides relief.” This gives physicians wide latitude and discretion to recommend the drug for patients who may not meet the description of “seriously ill Californians” that the legislation was intended to help.

**Senate Bill 420:** Although the Compassionate Use Act provided no set limits regarding the amount of marijuana patients may possess and/or cultivate, the California legislature adopted guidelines in 2003. The Medical Marijuana Program Act, known as Senate Bill 420 (SB 420), incorporated as Health and Safety Code Sections 11362.7 -11362.83, was signed into law in October 2003 and took effect on January 1, 2004. It imposes statewide guidelines outlining how much medical marijuana patients may grow and possess. Under the guidelines, qualified patients and/or their primary caregivers may possess no more than eight ounces of dried marijuana and/or six mature (or twelve immature) marijuana plants. However, SB 420 allows patients to possess larger amounts of marijuana when a physician recommends such quantities. The legislation also allows counties and municipalities to approve and/or maintain local ordinances permitting patients to possess larger quantities of medical marijuana than allowed under the State guidelines.

The provisions of SB 420 regarding limits on the amount of marijuana a qualified patient or primary caregiver could legally possess were successfully challenged in the case of *The People v. Patrick Kelly*. According to the decision of the California State Supreme Court on January 21, 2010, the limit provisions of SB 420 have the effect of amending the Compassionate Use Act, which did not address limits on quantity for qualified medical marijuana patients. Since the Compassionate Use Act was enacted by ballot initiative, the Supreme Court (upholding the ruling of two lower courts) ruled that only another ballot initiative could legally amend it. Article II, section 10, subdivision (c) of the California Constitution provides the Legislature may "amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." The decision in the *Kelly* case did not invalidate SB 420 as a whole, only the provisions limiting quantities. Federal regulations on quantity limits continue to apply.

SB 420 also mandates that the California State Department of Health Services establish a **voluntary** medical marijuana patient registry and issue identification cards to qualified patients and caregivers. The cards are to be issued through County Health Departments or their designee.

While an official identification card is optional and is not necessary to provide an affirmative defense, the card is a convenience when a qualified patient or caregiver is confronted by law enforcement. The system provides for a twenty-four hour telephone number for verification of patient and caregiver status. Verification can now also be done immediately on-line by entering the number of the ID card into the State Department of Public Health data base. Upon verification, there would be no arrest or citation and marijuana and/or plants would not be confiscated unless legal limits are exceeded. Such immediate verification is not always possible when the patient is carrying only the physician's recommendation or no documentation at all.

SB 420 provides that medical marijuana patients and primary caregivers may "associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes." That is the only reference to collectives or cooperatives in SB 420. The term "dispensary" does not appear in the law.

**Attorney General's Guidelines:** SB 420 does require the State Attorney General to "develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996." This resulted in the promulgation of an eleven page document in August 2008, widely known as the Attorney General's Guidelines. Four pages of this document are devoted to guidelines for the operation of collectives and cooperatives. Those guidelines are summarized as follows:

- Cooperatives and collectives must be non-profit entities;
- Medical marijuana transactions are subject to sales tax, per a determination by the State Board of Equalization;
- Cooperatives and collectives must follow generally accepted cash handling practices, such as maintaining a ledger of cash transactions;
- Each member's status as a qualified patient or primary caregiver must be verified, either by possession of a valid Medical Marijuana ID Card or by authentication of a doctor's recommendation through contact with the issuing physician, and be documented in the records of the cooperative or collective; and,
- Cooperatives and collectives must be self-contained; that is, they cannot distribute marijuana to or acquire marijuana from non-members.

According to the Attorney General's Guidelines, some of the storefront medical marijuana "dispensaries" now operating in San Diego can be considered legal, but only if they are properly operated and organized as cooperatives or collectives and adhere to the guidelines above. Both medical marijuana advocates and law enforcement officials indicated during the investigation that the Attorney General's Guidelines are not specific enough and have been subject to a wide variety of interpretations by local governmental jurisdictions throughout the State. In particular, advocates have claimed that law

enforcement agencies in San Diego County have been overly aggressive in raiding collectives which are attempting to comply with the Attorney General's Guidelines.

### **Programs In Other States**

California was the first state to adopt a law permitting the medical use of marijuana. Since 1996 fourteen other states have enacted medical marijuana laws whereby, to some degree, marijuana recommended by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

The medical marijuana laws in those states differ from those of California in that their programs are all operated solely on the state level, with little or no interpretive discretion left to local governmental entities, such as counties and cities. Also many more of the issues associated with medical marijuana programs are addressed in the other states' authorizing legislation than are addressed in California's Compassionate Use Act. Ten of these states have statewide patient registries and ID Card programs; in all of those states, the state issued card is mandatory for patient and caregiver participation. The laws in ten of those states are silent on the subject of cooperatives and collectives. New Mexico and Rhode Island have state licensed and regulated providers of medical marijuana. The recently established program in New Jersey proposes to establish a network of distribution outlets under State management. A medical marijuana patient in Oregon must list his or her marijuana provider with the State as a "registered site."

The majority of the other states are more specific than California in listing the diagnosed diseases which qualify a patient as eligible; those states have appeal processes under which additional medical conditions may be added. The limits for possession vary widely among the states which have medical marijuana programs.

### **Local Government Implementation**

The 2004/2005 San Diego County Grand Jury published a report dated June 8, 2005 entitled *The Politics of Medical Marijuana: A Question of Compassion*, many parts of which have been adapted for this report. Among the major findings of the 2004/2005 Grand Jury was the failure of San Diego County to implement the provisions of the Compassionate Use Act and SB 420. Their report specifically cited the failure of the County to establish a program for the issuance of medical marijuana ID cards and the failure to issue uniform protocols for law enforcement personnel. Recommendations were addressed to the County Board of Supervisors on those two issues.

**ID Cards:** Eight months after the 2004/2005 Grand Jury report was issued, the County of San Diego filed suit against the California Department of Health Services on February 1, 2006 in San Diego Superior Court. The County contended that the State law was preempted by federal prohibitions against marijuana. Therefore, the County of San Diego did not have to abide by the Compassionate Use Act and SB 420.

San Diego County Board of Supervisors claimed that their lawsuit was filed in response to a threatened suit by the San Diego chapter of the National Organization for the Repeal of Marijuana Laws (NORML) over the County's objection to implementing the state's medical marijuana ID card program. Therefore, the case is called *San Diego County v. San Diego NORML*. On December 6, 2006, the Court confirmed the validity of California medical marijuana laws and rejected the County's challenge.

The County of San Diego appealed the Superior Court decision on February 22, 2007. On July 31, 2008, the California Court of Appeal for the Fourth Appellate District, Division One, issued a decision denying the County's position on the basis that the applications for the ID card expressly state the card will not exempt the bearer from compliance with federal laws. Also, the card itself does not imply that the holder is immune from prosecution for federal offenses. The card merely identifies those persons California has elected to exempt from State criminal penalties and thus there is no conflict with the federal Controlled Substances Act.

On October 16, 2008, the California Supreme Court denied the County's Petition for Review and the United States Supreme Court denied the County's request to hear the case on May 26, 2009.

On July 6, 2009, the County initiated its Medical Marijuana ID Card Program. Through March 2010, the County had received 495 applications for the card. This is a low total, since there are at least 5,000 (and probably considerably more) medical marijuana patients in the County. County staff were prepared to receive many more applications. The ID Card Program is operated on a cost recovery basis, so the fee for the card is \$166 (\$83 for Medi-Cal recipients). The Grand Jury investigation revealed that the high fee was not as much a cause for the relatively low number of applicants as was the fear by applicants that their names and addresses would be entered into a data base available to law enforcement agents. The investigation showed that this is not the case. All transactions are held in strict confidence; law enforcement personnel entering a suspect's ID Card number into the State data base would only be able to ascertain whether or not that card was currently valid.

Members of the Grand Jury visited the County's Medical Marijuana ID Card Program located in the Health Services Complex at 3851 Rosecrans Street, San Diego. Unlike other aspects of medical marijuana law, the ID Card Program has definite guidelines for patients, primary caregivers and staff to follow. Among these are:

- All applications must be filed in person.
- Primary caregivers applying for a card must appear at the same time as the patient.
- The non-refundable fee must be paid at the time of application.
- A photo identification card and proof of residence must be submitted with the application.
- A valid doctor's recommendation must be presented with the application.
- Staff must verify whether the recommending physician is currently licensed.
- Staff must verify the authenticity of the recommendation with the physician.

- Staff determine the validity of a primary caregiver's status in accordance with the definition in the Compassionate Use Act, cited above.
- Approved applications are entered into the State data base and the card is issued by the State Department of Health Services within thirty days.

Staff of the Medical Marijuana ID Card Program are currently conducting training sessions for law enforcement personnel in authenticating the card. Advantages of having a card include:

- Having the card should prevent arrest or prosecution for patients dealing with law enforcement and possessing less medicine than allowed by county or state guidelines.
- Not having an ID card might result in an arrest.
- Possession of the ID card is a now mandatory condition for those patients on probation.
- The ID card is still an optional program for all other patients, but having an ID may be useful in a law enforcement encounter.

**Law Enforcement Protocols:** During the three year period the County of San Diego was litigating the legality of the State's medical marijuana laws, local jurisdictions in the County did very little to establish guidelines. This is especially true in the area of regulating the outlets for obtaining marijuana: cooperatives, collectives and "dispensaries". There have been a number of undercover sting operations, and executions of search warrants for allegedly illegal medical marijuana operations. Operators of some of these facilities have been arrested and charged. On September 9, 2009, Operation Green Rx, a multi-agency investigation targeting fourteen medical marijuana dispensaries, resulted in the arrests of thirty-three people, fourteen of whom were medical marijuana patients. This operation was conducted by the Office of the San Diego County District Attorney and a coalition of federal, county and municipal law enforcement agencies. Such operations have not reduced the proliferation of storefront dispensaries in the City of San Diego. Two recent highly publicized prosecutions of medical marijuana collective owners resulted in acquittals.

Community members opposed to the opening of medical marijuana storefront dispensaries in their neighborhoods are monitoring them for possible illegal activities. Operators of apparently legal collectives also acknowledge that many of the newly opened dispensaries are operating outside the law. The following types of activities have been observed at some of the alleged illegal dispensaries:

- a) glossy advertisements in local publications
- b) inducements of free or reduced price marijuana
- c) sign twirler advertising
- d) patients congregating outside the facility
- e) younger customers with no apparent disabilities
- f) sales of other drugs and other non-marijuana products
- g) selling marijuana to non-members

- h) obtaining marijuana from non-members
- i) importing marijuana from outside the County
- j) weapons on the premises
- k) frequented by members of street gangs
- l) large supplies of cash with no ledger or records of transactions
- m) doctors associated with the facility giving recommendations, with little or no examination of patients
- n) failure to authenticate recommendations of prospective members
- o) operators of dispensaries acting as primary caregivers for multiple patients
- p) profit making dispensaries

Even law enforcement personnel and community opponents of storefront dispensaries acknowledge that the dispensary clientele includes the seriously ill patients that the medical marijuana legislation was intended to help. Patients and operators of legally operating collectives are requesting guidelines from law enforcement so that patients may have safe access to medical marijuana and so that operators will not be subject to search warrants and arrests. The United States Attorney General has issued an enforcement opinion; the State Attorney General has issued guidelines. The Grand Jury is proposing that the District Attorney of the County of San Diego follow suit by issuing a position paper on what is and what is not considered a legal cooperative or collective in this County. This position paper can be developed in cooperation with the San Diego County Sheriff's Department and in consultation with leaders of municipal law enforcement agencies throughout the County.

**Medical Marijuana Advisory Council:** Another area of concern among medical marijuana advocates is the absence of a forum for the exchange of information between government leaders and the collective operators and members. This is especially important at a time when court decisions and the proposed enactment of new regulatory ordinances by both the County and the City of San Diego are constantly changing the medical marijuana landscape. The County's web site lists about twenty advisory councils or committees. Examples are the Older Adults System of Care Advisory Council, the Parks Advisory Committee, and the Veterans Advisory Council. The Grand Jury is suggesting that a Medical Marijuana Advisory Council be established in the District Attorney's Office. This Advisory Council would provide a forum through which the operators of legitimate medical marijuana cooperatives and collectives, as well as patients and members of the public, could engage in dialogue with representatives of the County law enforcement agencies on a regular basis.

**Regulatory Strategies:**

The County of San Diego and each of its eighteen cities have chosen one of the following three strategies to control the establishment of medical marijuana dispensaries in their respective jurisdictions:

1. Enactment of interim moratoria
2. Outright bans
3. No permissible use under existing land use codes

Just because one of these strategies is in effect in a given community does not necessarily mean that there are no cooperatives or collectives currently operating in that jurisdiction.

**Moratoria:** While in the process of investigating and researching the issue of licensing marijuana dispensaries, city councils may enact date-specific moratoria that expressly prohibit the presence of medical marijuana dispensaries and prohibit the sale of marijuana anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted allowing for the regulation, licensing and permitting of medical marijuana collectives and cooperatives.

A county board of supervisors can also enact a moratorium with respect to marijuana dispensaries within the unincorporated areas of a county. Approximately eighty California cities, including the cities of Chula Vista, Imperial Beach, National City, Oceanside and Santee have enacted moratoria on marijuana dispensaries.

The following provisions of California Government Code Section 65858 apply when a moratorium is being established:

- The legislative body to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption.
- The legislative body may extend the interim ordinance for ten months and fifteen days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.
- The legislative body shall not adopt or extend any interim ordinance unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare.
- Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

The City of San Diego's Medical Marijuana Task Force is currently studying specific zoning and land use proposals for medical marijuana cooperatives and collectives. Until the recommendations of the Task Force are adopted into law, the City Council may enact a moratorium on the opening of any additional "dispensaries" under the provisions of Government Code Section 65858. The Grand Jury proposes the enactment of such a moratorium. The failure to enact a moratorium in the City of Los Angeles has resulted in the opening of an estimated 1,000 dispensaries that officials are now trying to regulate.

On September 26, 2009 the County of San Diego Board of Supervisors enacted a moratorium on the establishment of medical marijuana collectives in the unincorporated areas. The purpose of the moratorium was to allow County staff the time to study how collectives should be permitted and appropriately regulated. The County Department of Planning and Land Use published regulatory guidelines and a draft ordinance on March 3, 2010. The draft ordinance marks a major step forward for the County after many years of challenging the legality of the State's medical marijuana laws. However, the ordinance was not developed in consultation with patient advocates and is perceived to be more restrictive than what has been recommended for the City of San Diego by the Medical Marijuana Task Force. Public comment on the draft ordinance closed on April 2, 2010. The ordinance is on the agenda for the County Planning Commission meeting on May 14, 2010 and is scheduled to be considered by the Board of Supervisors on June 23, 2010.

**Bans:** While the Compassionate Use Act of 1996 allows seriously ill persons to obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on medical marijuana dispensaries and does not expressly authorize or prohibit the sale of medical marijuana to patients or primary caregivers. Neither Proposition 215 nor Senate Bill 420 specifically authorize nor prohibit the dispensing of marijuana from a storefront business. Also, no State statute expressly permits or disallows the licensing or operation of marijuana dispensaries. Consequently, over a hundred California cities and nine counties have prohibited marijuana dispensaries within their respective geographical boundaries.

In San Diego County, the Cities of El Cajon, Escondido, San Marcos and Vista have enacted bans on medical marijuana dispensaries. These total bans deny some qualified patients access to medical marijuana in their communities of residence; they also place the onus of regulation and enforcement on neighboring cities that either permit and regulate such establishments or are presently considering the enactment of land use and zoning ordinances.

The legality of outright bans will most likely be determined by the decision in the case of *Qualified Patients Association v. City of Anaheim*, now pending in California's Fourth Appellate District Court. A decision was initially expected in December 2009, but the Court requested further briefing to seek clarification on whether the State legislature meant to prevent local governments from using nuisance statutes to outlaw medical marijuana distribution.

The plaintiff, Qualified Patients Association, filed a lawsuit shortly after Anaheim adopted a ban on dispensaries in July 2007. It argued that the clear intent of the Medical Marijuana Program Act (SB 420), in providing an exemption under the nuisance law, was to preempt local ordinances and enforcement efforts based on nuisance law. It also argued that local governments cannot simply ban an activity that has been deemed lawful by the state. Qualified Patients Association had been in operation for about five months prior to the ban. An appeal was filed in March 2008 after the Orange County Superior Court ruled that Anaheim could prohibit medical marijuana dispensaries from operating within its city limits.

The Anaheim case has drawn considerable attention as more and more local governments confront the issue of access to medical marijuana. Many law enforcement associations in the State filed briefs in support of Anaheim, as have about thirty-six cities. The case is the first lawsuit of its kind to reach the appellate courts in California, and may shape the issue of access to medical marijuana for patients across the State. A decision by the Fourth Appellate District Court in the case is expected in the summer of 2010.

**Restricted zoning:** City and County officials have the authority to restrict owners and operators to locate and operate “medical marijuana dispensaries” in prescribed geographical areas, and require them to meet prescribed licensing requirements. The City of San Diego is considering such an approach through its Medical Marijuana Task Force. In contrast to the County, the City of San Diego has conducted a much more open and inclusive process with significant input from patients, business owners, legal experts and community residents. The initial set of Task Force recommendations dealt with permitting and zoning regulations; hours of operation; non-profit status; and required lighting, signage, and security. On March 24, 2010, the City Council’s Land Use and Housing Committee directed the City Attorney to prepare a draft ordinance, based largely on the Task Force’s recommendations, for consideration at a future meeting of the full City Council.

Other cities have land use codes that do not specifically recognize “medical marijuana dispensaries” as an allowable use and therefore have a *de facto* ban on granting permits. During the Grand Jury investigation, both proponents and opponents of medical marijuana agreed that many of the storefront “dispensaries” were operating outside the limited definition of cooperatives and collectives as implicitly stated in SB 420 and more explicitly defined in the Attorney General’s Guidelines. There was agreement also that many patients obtaining medical marijuana from the apparently illegal storefront operations are truly qualified patients according to the original intent of the Compassionate Use Act. These are patients who are unable to cultivate their own marijuana due to extreme incapacity or by the restrictions of their own living arrangements. The County and every city therein should adopt land use regulations allowing the establishment of a limited number of cooperatives and collectives within their jurisdictions, so that these qualified patients are able to obtain medical marijuana in their own communities.

**Facility Site Visits:** Grand Jury members visited two facilities that appeared to be operating in accordance with the Attorney General’s guidelines. Both of these operations blended in with their respective communities; patients were not congregating around their facilities. Both verified recommendations of prospective patients/members and maintained records of cash transactions. Both had business licenses and paid sales tax on their transactions. Both had not-for-profit status. Neither advertises in local publications. The major difference between them is size of membership: one would be considered a large collective and the other would be considered a small one.

When regulations and guidelines are adopted to govern cooperatives/collectives, there should be a distinction drawn between a small cooperative/collective and a large one. Guidelines, when enacted, may direct cooperatives and collectives to:

- 1) install security measures, i.e., security guards or video surveillance
- 2) have annual or periodic audits
- 3) pay a business tax
- 4) report on payments to growers and suppliers
- 5) undergo land use processes (process 2 through process 5)
- 6) obtain business licenses/permits
- 7) install signage and special lighting
- 8) pay administrative fee costs

The smaller cooperatives and collectives will be challenged to follow the guidelines because of budgetary constraints. Cooperatives or collectives that are providing a legitimate service to qualified patients, and are willing to follow the guidelines for their small group of medical marijuana patients, should not be forced to close because they cannot afford to remain in compliance with the new regulations.

### **Physicians**

The Grand Jury's investigation reveals that law enforcement personnel and some government officials believe that there are physicians in San Diego County whose sole practice consists of writing medical marijuana recommendations. The Grand Jury has no jurisdiction over State agencies, such as the Medical Board of California or the Osteopathic Medical Board of California. We point out, however, that citizens who suspect professional malfeasance can register a complaint with either agency, as appropriate.

The Grand Jury investigation revealed that the vast majority of medical marijuana recommendations in the San Diego area are being written by about twenty-five physicians, some of whom are affiliated with dispensaries. Advertisements for some of those dispensaries indicate that a physician is available to write a recommendation for an advertised fee. Very few mainstream doctors have been writing the recommendations, although their numbers are increasing.

There are sufficient legal protections for doctors who write recommendations for medical marijuana. California Health & Safety Code section 11362.5(c) states "Notwithstanding any other provision of law, no physician in this State shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."

The Medical Board of California, recognizing that medical marijuana is an emerging treatment modality, has assured physicians that they will not be subject to investigation or disciplinary action by the Board if they arrive at the decision to recommend marijuana in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending medical marijuana will not generate an investigation unless there is additional information indicating that the physician is not adhering to accepted medical standards.

These accepted standards, according to the Medical Board, are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

1. History and good faith examination of the patient
2. Development of a treatment plan with objectives
3. Provision of informed consent including discussion of side effects
4. Periodic review of the treatment's efficacy
5. Consultation, as necessary
6. Proper record keeping that supports the decision to recommend the use of medical marijuana

If physicians use the same care in recommending medical marijuana to patients as they would in recommending any other medication, they would not be subject to license suspension or revocation.

On the federal level, the United States Court of Appeals ruled in a 2002 decision in the *Conant v. Walters* case that the government could not revoke a physician's Drug Enforcement Administration registration merely because the doctor makes a recommendation for the use of medical marijuana based on a legitimate medical judgment, and could not initiate an investigation solely on that ground. These prohibitions would apply whether or not the doctor anticipates that the patient will use the recommendation to obtain marijuana in violation of federal law. The Court recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients and to make recommendations for medical marijuana.

These protections notwithstanding, the majority of doctors are reluctant to write medical marijuana recommendations for their patients. Some doctors, with a patient's consent, will share medical records with another physician who will write a recommendation. More frequently, however, a patient will seek out one of a small group of physicians who specialize in marijuana recommendations for a fee, usually between \$100 and \$200. The Grand Jury does not wish to paint all these physicians with the same brush, but there are some documented investigations in the files of both the Medical Board of California and the Osteopathic Medical Board of California of doctors who violated the above described standards of care when recommending medical marijuana. The Grand Jury's research of the public records of State medical boards revealed that disciplinary action has been taken against some physicians for improper conduct relating to medical marijuana patients. Disciplinary actions have included fines and license suspensions. Types of improper conduct include issuing medical marijuana recommendations without conducting adequate medical examinations, failure to consult with primary care or treating physicians or to obtain a review of the patients' medical records, and failure to maintain adequate documentation.

### ***FACTS AND FINDINGS***

**Fact:** The number of medical marijuana dispensaries in the City of San Diego has increased from less than fifty in June 2009 to over one hundred in March 2010.

**Fact:** The County of San Diego District Attorney's Office, along with the County of San Diego Sheriff's Office, the San Diego Police Chief's Office and other State and local law enforcement offices, announced on September 10, 2009 that search warrants were served at fourteen marijuana dispensaries in San Diego County.

**Fact:** State of California medical marijuana legislation has been subject to variations in interpretations by cities and counties throughout the State.

**Fact:** Medical marijuana advocates in San Diego County have been requesting guidelines from law enforcement agencies for several years.

**Fact:** Most cities in San Diego County have bans or moratoria (*de jure* or *de facto*) on medical marijuana dispensaries.

**Fact:** Some community activists and law enforcement personnel believe that the storefront medical marijuana dispensaries in the City of San Diego are operating illegally.

**Fact:** The City of San Diego has impaneled a Medical Marijuana Task Force to make recommendations to the City Council for the regulation of cooperatives and collectives.

**Fact:** Membership in individual cooperatives and collectives ranges from a few patients to over a thousand.

**Finding #01:** The District Attorney's Office has not published guidelines for the operation of legal medical marijuana cooperatives and collectives in San Diego County which would address the concerns of operators of those programs who are trying to comply with State law.

**Finding #02:** There is currently no forum through which the operators of legitimate medical marijuana collectives and cooperatives could engage in dialogue with representatives of the District Attorney's Office on a regular basis.

**Finding #03:** There are no clear and uniform guidelines for law enforcement personnel in San Diego County which would protect the rights of legitimate qualified medical marijuana patients.

**Finding #04:** The San Diego City Council is empowered by Government Code Section 65858 to enact a moratorium on the opening of additional medical marijuana dispensaries.

**Finding #05:** Adopting cost neutral zoning and land use ordinances is an effective method for the licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the unincorporated areas and eighteen cities of San Diego County.

***Finding #06:*** The recommendations of the City of San Diego’s Medical Marijuana Task Force for zoning and land use ordinances for cooperatives and collectives may serve as a model for adoption by other cities in the County.

***Finding #07:*** Annual financial reporting and periodic auditing of cooperatives and collectives, predominantly cash operations, are not currently required in San Diego County.

***Finding #08:*** The current ban on the opening of medical marijuana collectives in the Cities of El Cajon, Escondido, San Marcos and Vista deprives some qualified medical marijuana patients of access to marijuana in their communities.

***Finding #09:*** The lack of zoning and land use ordinances for the licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the cities of Carlsbad, Coronado, Del Mar, Encinitas, La Mesa, Lemon Grove, Poway and Solana Beach deprives some qualified medical marijuana patients of access to marijuana in their communities.

***Finding #10:*** The current moratorium on the opening of cooperatives and collectives distributing medical marijuana in the unincorporated areas of San Diego County and the cities of Chula Vista, Imperial Beach, National City, Oceanside and Santee deprives some qualified medical marijuana patients of access to marijuana in their communities.

***Finding #11:*** The imposition of regulatory fees and associated costs could create a financial hardship for the smaller medical marijuana cooperatives and collectives.

### ***RECOMMENDATIONS***

**The 2009/2010 San Diego County Grand Jury recommends that the County of San Diego District Attorney:**

**10-107: In consultation with the San Diego County Sheriff’s Department and officials of the Police Departments of the Cities of Carlsbad, Chula Vista, Coronado, El Cajon, Escondido, La Mesa, National City, Oceanside and San Diego, publish a position paper which contains guidelines for the operation of legal medical marijuana cooperatives and collectives in San Diego County.**

**10-108: In cooperation with the San Diego County Sheriff’s Department, establish a Medical Marijuana Advisory Council as a forum through which the operators of legitimate medical marijuana collectives and cooperatives, as well as patients and members of the public, could engage in dialogue with representatives of County law enforcement agencies on a regular basis.**

**The 2009/2010 San Diego County Grand Jury recommends that the County of San Diego Sheriff:**

- 10-109:** In cooperation with the County of San Diego District Attorney and in consultation with officials of the nine municipal police departments in the County, publish a position paper which contains guidelines for the operation of legal medical marijuana cooperatives and collectives in San Diego County.
- 10-110:** Adopt clear guidelines for law enforcement personnel so that the rights of legitimate medical marijuana patients will be respected.
- 10-111:** In cooperation with the County of San Diego District Attorney, establish a Medical Marijuana Advisory Council as a forum through which the operators of legitimate medical marijuana collectives and cooperatives, as well as patients and members of the public, could engage in dialogue with representatives of County law enforcement agencies on a regular basis.

**The 2009/2010 San Diego County Grand Jury recommends that the County of San Diego Board of Supervisors:**

- 10-112:** Adopt a cost neutral County program for the licensing, regulation and periodic inspection of authorized collectives and cooperatives distributing medical marijuana in the unincorporated areas of San Diego County, and establish a limit on the number of such facilities.
- 10-113:** Adopt regulations which would allow for the closure of all unlicensed “dispensaries” in the unincorporated areas.

**The 2009/2010 San Diego County Grand Jury recommends that the Mayor of the City of San Diego and the City Council of the City of San Diego:**

- 10-114:** Enact an ordinance creating an immediate moratorium on the opening of additional medical marijuana dispensaries in the City of San Diego, pending the adoption by the Council of guidelines regulating such establishments, as recommended by the Medical Marijuana Task Force with appropriate public input.
- 10-115:** Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.
- 10-116:** Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”

**The 2009/2010 San Diego County Grand Jury recommends that the City Councils of El Cajon, Escondido, San Marcos and Vista:**

- 10-117: Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.**
- 10-118: Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”**
- 10-119: Upon the enactment of such an ordinance, rescind the current ban on the opening of medical marijuana collectives and cooperatives.**

**The 2009/2010 San Diego County Grand Jury recommends that the City Councils of Chula Vista, Imperial Beach, National City, Oceanside and Santee:**

- 10-120: Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.**
- 10-121: Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”**
- 10-122: Upon the enactment of such an ordinance, rescind the current moratorium on the opening of medical marijuana collectives and cooperatives.**

**The 2009/2010 San Diego County Grand Jury recommends that the City Councils of Carlsbad, Coronado, Del Mar, Encinitas, La Mesa, Lemon Grove, Poway and Solana Beach:**

- 10-123: Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.**
- 10-124: Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”**

***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under

the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Date</b>
<b>District Attorney, County of San Diego</b>	<b>10-107, 10-108</b>	<b>8/6/10</b>
<b>Sheriff, County of San Diego</b>	<b>10-109, 10-110, 10-111</b>	<b>8/6/10</b>
<b>Board of Supervisors, County of San Diego</b>	<b>10-112, 10-113</b>	<b>9/6/10</b>
<b>Mayor, City of San Diego</b>	<b>10-114, 10-115, 10-116</b>	<b>9/6/10</b>
<b>City Council, City of San Diego</b>	<b>10-114, 10-115, 10-116</b>	<b>9/6/10</b>
<b>City Council, City of El Cajon</b>	<b>10-117, 10-118, 10-119</b>	<b>9/6/10</b>
<b>City Council, City of Escondido</b>	<b>10-117, 10-118, 10-119</b>	<b>9/6/10</b>
<b>City Council, City of San Marcos</b>	<b>10-117, 10-118, 10-119</b>	<b>9/6/10</b>
<b>City Council, City of Vista</b>	<b>10-117, 10-118, 10-119</b>	<b>9/6/10</b>
<b>City Council, City of Chula Vista</b>	<b>10-120, 10-121, 10-122</b>	<b>9/6/10</b>
<b>City Council, City of Imperial Beach</b>	<b>10-120, 10-121, 10-122</b>	<b>9/6/10</b>
<b>City Council, City of National City</b>	<b>10-120, 10-121, 10-122</b>	<b>9/6/10</b>
<b>City Council, City of Oceanside</b>	<b>10-120, 10-121, 10-122</b>	<b>9/6/10</b>
<b>City Council, City of Santee</b>	<b>10-120, 10-121, 10-122</b>	<b>9/6/10</b>
<b>City Council, City of Carlsbad</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of Coronado</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of Del Mar</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of Encinitas</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of La Mesa</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>

<b>City Council, City of Lemon Grove</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of Poway</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>
<b>City Council, City of Solana Beach</b>	<b>10-123, 10-124</b>	<b>9/6/10</b>

**RESOLUTION NO. 2010-6914**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF IMPERIAL BEACH ADOPTING A RESPONSE TO A REPORT BY THE SAN DIEGO COUNTY GRAND JURY FILED JUNE 7, 2010 ENTITLED "MEDICAL MARIJUANA IN SAN DIEGO"**

**WHEREAS**, on June 7, 2010, the San Diego County Grand Jury issued a report entitled "Medical Marijuana in San Diego," which made various findings and recommendations pertaining to the City of Imperial Beach; and

**WHEREAS**, the City Council is obligated per Penal Code section 933.05 to respond to these recommendations.

**NOW, THEREFORE**, be it resolved by the City Council for the City of Imperial Beach as follows:

Section 1. The City Council adopts the response to the Grand Jury's report accompanying this resolution.

Section 2. The City Clerk is authorized to send a signed copy of the response to the Presiding Judge of the San Diego County Superior Court as required by Penal Code section 933.05.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Imperial Beach at its regular meeting held on the 7th day of July, 2010, by the following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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

ATTEST:

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



# DRAFT

July 7, 2010

The Honorable Kevin A. Enright  
Presiding Judge  
San Diego County Superior Court  
220 W. Broadway  
San Diego, CA 92101

**Re: Response to June 7, 2010 Grand Jury Report Entitled  
“Medical Marijuana in San Diego”**

Dear Judge Enright:

This letter constitutes the response to the above-referenced Grand Jury report on behalf of the City Council for the City of Imperial Beach. The response discusses those findings and recommendations pertinent to the City of Imperial Beach and does not discuss those findings and recommendations applicable to other governmental agencies and officers.

### Response to Findings

Finding 5 says that adopting “cost-neutral” zoning and land use ordinances are effective for licensing, regulating, and inspecting dispensaries. **The City Council disagrees with this finding.** The City of Imperial Beach has not fully analyzed the way such an ordinance would affect the City of Imperial Beach. Also, no city in the county successfully regulates dispensaries through land use or zoning laws, except via complete bans on dispensaries. Further, any business regulations needed for “vice” type businesses (massage, adult entertainment, etc.) involve business licensing laws, independent of land use regulations. Therefore, based on these uncertainties, at this time, the City must disagree.

Finding 6 by the Grand jury is that the City of San Diego’s medical marijuana task force “may” serve as a good model for other cities to adopt. **The City Council agrees that the City of San Diego Medical Marijuana Task Force’s guidelines may possibly serve as a guideline to other cities about how to regulate medical marijuana.**

Finding 7 is that auditing of dispensaries is not occurring in the County. **The City Council agrees with this finding.** The City is not aware of any entity currently charged with this task.

Finding 10 from the Grand Jury is that the current moratorium has the effect of denying legitimate, qualified patients access to medical marijuana. **The City Council disagrees with this finding. The Grand Jury report did not indicate that it interviewed any person specifically in Imperial Beach, did not indicate that it ascertained that anyone in Imperial**

## **DRAFT**

Honorable Kevin A. Enright

June 18, 2010

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**Beach is a legitimately qualified medical marijuana patient, and did not demonstrate that anyone in Imperial Beach who had a medical need for marijuana was unable to obtain it. Additionally residents of Imperial Beach could likely obtain medical marijuana from other locations.**

Finding 11 from the Grand Jury is that imposing regulatory fees and costs could impose a hardship on smaller collectives and cooperatives. **The City Council disagrees with this finding because the Grand Jury did not audit any dispensary's finances, much less compare the burden of paying regulatory fees on dispensaries to the burden on local governments of regulating dispensaries, and the City has no reason to believe that medical marijuana cooperatives or collectives will be unable to afford reasonable regulatory fees.**

### Response to Recommendations

First, the Grand Jury called on the City to pass a cost-neutral ordinance licensing, regulating, and monitoring dispensaries, and limiting the number of dispensaries. **The City will not implement this recommendation at this time because the recommendation is unwarranted and unreasonable.** The recommendation is unreasonable for the City to implement at present because: (1) the *Anaheim* case mentioned in the Grand Jury report is still pending; (2) the initiative to legalize marijuana is still pending, and would likely cause significant changes to cities' regulatory approaches if passed; and (3) any ordinance could require Coastal Commission approval and possibly voter approval. These will not be accomplished within Penal Code section 933.05's 90-days-from-publication requirement for responding to Grand Jury recommendations. The City might decide to adopt an ordinance along these lines, but in light of the current legal uncertainty about marijuana's status, doing so on the timeline seemingly required by the Grand Jury's report would be unwarranted and unreasonable.

The Grand Jury's second recommendation is that the City adopt regulations allowing it to shut down unlawful dispensaries. **The City has already implemented this recommendation.** Currently, under Chapters 1, 4, and 17 of the Imperial Beach Municipal Code, the City may take any number of enforcement actions against any business operating in violation of the City's zoning, business licensing, or other codes. These include pursuing injunctions in court to shut down improper businesses.

The final recommendation is that, once an ordinance is adopted, the City lift its moratorium. **For the same timing reasons discussed above for the first recommendation and given the fact that the City has not yet determined its policy approach to this matter, the City Council declines to implement this recommendation at present because the allotted timeframe is unreasonable.**

Respectfully submitted,

Honorable Mayor Jim Janney  
Mayor, City of Imperial Beach





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** JULY 7, 2010  
**ORIGINATING DEPT.:** JACQUELINE M. HALD, CMC, CITY CLERK

**SUBJECT:** DESIGNATION OF VOTING DELEGATE AND ALTERNATE  
FOR LEAGUE OF CALIFORNIA CITIES ANNUAL  
CONFERENCE – SEPTEMBER 15-17, 2010

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**BACKGROUND AND DISCUSSION:**

The League's 2010 Annual Conference is scheduled for September 15 through September 17, in San Diego. An important part of the Annual Conference is the Annual Business Meeting, scheduled for Friday, September 17. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, the City Council must designate a voting delegate. In the event that the designated voting delegate is unable to serve in that capacity, up to two alternate voting delegates may be appointed.

**ENVIRONMENTAL IMPACT**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

None.

**DEPARTMENT RECOMMENDATION:**

1. Designate a voting delegate and up to two voting alternates for the 2010 League Annual Conference.
2. Direct staff to complete and submit a Voting Delegate Form to the League office by Friday, August 20, 2010.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager





**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL/CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

**FROM:** GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR

**MEETING DATE:** JULY 7, 2010 – TIME SPECIFIC FOR 7:00 PM

**ORIGINATING DEPT.:** COMMUNITY DEVELOPMENT DEPARTMENT  
GREG WADE, DIRECTOR *GW*

**SUBJECT:** COMMERCIAL ZONING REVIEW – CONTINUED FOCUS DISCUSSION ON COMMERCIAL ZONING DESIGN GUIDELINES

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**BACKGROUND:**

As part of the consultant team’s scope of work, they were asked to review the City’s existing design guidelines and provide recommendations for developing an updated set of design guidelines specific to the City’s commercial zones. In addition to those recommendations, they also provided more specific recommendations that could be incorporated immediately into the current design guidelines. Another option would be to adopt these more specific design guidelines concurrently with the other commercial zoning amendments.

The following are the recommendations of the Commercial Zoning Review regarding proposed design guidelines:

To ensure that the City’s vision is met and that a high quality of design is achieved, it is recommended that the existing 1984 Design Review Manual and Design Review Guidelines (Resolution #3117) be updated to create a more user-friendly, graphically oriented format, or a “form based code.” This will allow the Design Guidelines to be more easily interpreted and enforced compared to the existing Imperial Beach Design Guidelines, which are in narrative form. Within the existing Design Guidelines document, many concepts are difficult to interpret because of the lack of graphic examples. Additionally, some concepts and guidelines may be out of date, specifically related to the design of multi-family residential, and the proposed addition of mixed-use zones.

It is recommended that the new document emphasize standards and guidelines for the development of high quality projects specifically within the Commercial and Mixed-Use Zones, focusing on high quality design related to multi-family residential buildings, mixed-use, ground floor retail uses, pedestrian orientation, and the public realm. Additionally, the Design Guidelines should be closely coordinated with the Palm Avenue Commercial Corridor Master Plan. The new Design Guidelines should seek a balance between being overly prescriptive at one end of the scale and overly vague and open to misinterpretation at the other end. The Design Guidelines should be graphic intensive. In addition, the Design Guidelines should be capable of being easily reproduced in black and white, and be suitable for downloading from the City of Imperial Beach’s website.

The Design Guidelines should address the following topics:

1. Relationship of Buildings to Site and Surrounding Area
2. Commercial and Mixed-Use Development
3. Multiple-Family Residential Development
4. Ground Floor Uses and Street Level Design
5. Building Design, Materials and Colors
6. Landscape Improvements, Open Space, and Exterior Lighting
7. The Use of Landscaping for Storm Water Control
8. Circulation and Parking
9. Sign Criteria

The Design Guidelines should also incorporate elements of sustainability including but not limited to building siting, landscape, storm water control, paving, lighting, signage, building materials, and construction practices and materials.

## **DISCUSSION:**

As stated above, the consultant team also prepared a list of more specific design guideline recommendations. The following, therefore, is a summary of those key design guidelines that were developed specifically for the study areas. These guidelines would be applicable to each of the proposed Commercial/Mixed Use Zones C/MU-1, C/MU-2, and C/MU-3, which include Palm Avenue, Seacoast Drive, and the intersection of 13th Street and Imperial Beach Boulevard. Prior to the preparation of any Design Guidelines update, it is recommended that these guidelines either be incorporated within the existing 1984 Design Review Manual and Design Review Guidelines (Resolution #3117), or be adopted separately yet concurrently with the other proposed commercial zoning amendments so that they may be utilized as part of the development review process:

### **Relationship of Buildings to Site and Surrounding Area**

View corridors to the oceanfront should be preserved where possible. This can be accomplished through the use of upper story breezeways or courtyards, or at the ground floor, with mid-block pedestrian connections, plazas, or paseos.

### **Commercial and Mixed-Use Development**

1. All buildings located along Palm Avenue, Seacoast Drive, or the intersection of 13th Street and Imperial Beach Boulevard, should locate their primary entrances facing on or toward the street, or another public space that intersects the sidewalk. Primary entrances oriented only to parking lots are discouraged.
2. Innovative and imaginative design and architecture is strongly encouraged.
3. Building entrances, corners of buildings, and street corners should be well articulated.
4. Variation and expression of building details, form, line, colors and materials should be utilized to create visual interest.
5. Variation in wall plane and roof line is strongly encouraged to reduce the scale and bulk of the buildings, and to add visual interest.
6. Individual units should be expressed where possible.

7. Street facing facades should incorporate balconies, patios, and other pedestrian-scaled elements to enliven the street edge.
8. Single story commercial buildings should be designed with a taller ceiling height, and a minimum building height of 20'.
9. Blank walls, or walls without windows, doors, and other articulation, are strongly discouraged. The maximum length of any blank wall shall be limited to 20'.

### **Ground Floor Uses and Street Level Design**

1. Ground floors should consist of primarily active uses, such as active commercial, retail, and restaurants, as well as active residential uses such as building amenities, common rooms, or building lobbies.
2. A minimum of 60% of the street facing facades of ground floor nonresidential uses should be comprised of clear non-reflective glass that allow views of the indoor space. Interior blinds, drapes, posters, signage, and/or interior shelving for product displays may potentially obscure a maximum of 30% of the required transparent area.
3. Architectural features such as canopies, awnings, lighting, and other design features should be incorporated into the ground floor, to add human scale to the streetscape and add to the pedestrian experience. Projects should strive to achieve three-sided or four-sided architecture to shield service and delivery areas, and utility boxes and associated infrastructure.

### **Landscape Improvements, Open Space, and Exterior Lighting**

1. The public realm should be enhanced by creating an attractive pedestrian atmosphere. This may include the use of landscaping, seat walls, seating, plazas, fountains, public art, and other high quality design features.
3. Common open space should be imaginatively landscaped, well utilized, and well maintained.
4. Service areas, storage, trash collection areas, and equipment should be located at the rear of buildings if possible, and screened from view by the use of walls, high quality fencing, planting, or a combination of these solutions.
5. Drought-tolerant, native plant materials should be used whenever possible.
6. Landscape plans should incorporate provisions for stormwater runoff including bioswales or other comparable methods.

### **Circulation and Parking**

1. Curb cuts or access to parking lots should be limited along Seacoast Drive, Old Palm Avenue and Palm Avenue/SR-75.
2. Where they exist, surface parking lots should be screened from the street. Additionally, they should be shaded from the sun, by trees, vine covered trellises, or overhead solar panels.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

This discussion of the recommended design guidelines and other zoning amendments is not, in itself, subject to CEQA.

**FISCAL IMPACT:**

None with this item.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the City Council support the adoption of the above-listed key design guidelines for the City's Commercial/Mixed-Use Zones. Staff further recommends that these design guidelines be adopted concurrently with the other proposed zoning amendments when they are presented to the City Council for adoption.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.



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Gary Brown, City Manager

Attachments:           None.