



A G E N D A

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



DECEMBER 15, 2010

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

**CLOSED SESSION MEETING – 5:00 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 REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 9th & Palm Redevelopment Project, 735 & 741-849 Palm Ave., Imperial Beach, CA 91932, APNs 626-250-04, 05 & 06 and 626-250-03

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Sudberry Properties, Inc.

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 110-126 Evergreen & NE Corner of Evergreen Avenue & Seacoast Drive, Imperial Beach, CA 91932, APN 625-351-25-26

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Howard Land Development, LLC.

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 119 Elm Street, Imperial Beach, CA 91932, APN 625-351-02

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: George W. Howard III & Austine R. Howard

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Continued on Next Page

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.

CLOSED SESSION (Continued)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 236 & 240 Palm Avenue, Imperial Beach, CA 91932, APN 625-023-07

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: George and Cinder Braudaway

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 226 Palm Avenue, Imperial Beach, CA 91932, APN 625-023-06

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Kenneth & Dianne Schertzer

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 1044-52 Fern Ave, Imperial Beach, CA 91932, APN 632-130-37

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Braudsand, LLC

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: Vacant Lot on Florida Street, Imperial Beach, CA 91932, APN 626-230-13

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Dorothy L. Baker

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 701-707 Palm Ave., Imperial Beach, CA 91932, APN 626-250-02

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Parmela S. Sawhney Trust 10-09-02

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 766 10th Street, Imperial Beach, CA 91932, APN 626-282-13

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Andy & Catherine Borgia

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

Significant Exposure to Litigation pursuant to Government Code Section 54956.9(b)(3)(A):

No. of Cases: 1

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a):

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

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

RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)

REGULAR MEETING CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

PLEDGE OF ALLEGIANCE

AGENDA CHANGES

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)

None.

CONSENT CALENDAR (2.1 - 2.3) - *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 September 1, 2010 and the Regular and Special Meetings of December 1, 2010.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

City Manager's Recommendation: Ratify the following registers: Accounts Payable Numbers 72173 through 72260 with the subtotal amount of \$1,120,718.86 and Payroll Checks 43365 through 43399 for the pay period ending 11/18/10 with the subtotal amount of \$144,191.17, for a total amount of \$1,264,910.03.

2.3 KAMAL NONA (OWNER)/NICK ALJABI (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 13TH STREET AND 1150, 1152 13TH STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863. (0600-20)

City Manager's Recommendation: Adopt Resolution No. 2010-6982, 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 (3)

None.

ORDINANCES – SECOND READING & ADOPTION (4)

None.

PUBLIC HEARINGS (5.1 - 5.4)

5.1 MODIFICATIONS TO CONDITIONS OF APPROVAL FOR REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), AND SITE PLAN REVIEW (SPR 100016) FOR A CERTIFIED FARMER'S MARKET ("IMPERIAL BEACH FARMER'S MARKET") LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036. (0130-30 & 0600-20)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report and consider recommendations;
3. Provide comment on operation of the project;
4. Close the public hearing; and
5. Adopt Resolution No. 2010-6975, approving modifications to the previous conditions of approval for Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016).

5.2 CODE ENFORCEMENT – WEED & RUBBISH ABATEMENT PUBLIC HEARING TO HEAR AND CONSIDER ALL OBJECTIONS TO THE PROPOSED REMOVAL OF WEEDS, RUBBISH, REFUSE, AND DIRT FROM 715 HOLLY AVENUE AND 822 GEORGIA STREET. (0470-20)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report;
3. Entertain objections or protests;
4. Close the public hearing; and
5. Consider a motion to:
 - a. Adopt Resolution No. 2010-6978 to allow for the abatement of 715 Holly Avenue, and authorizing staff to proceed with and perform the necessary abatement of the nuisance and authorizes the staff to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from the 715 Holly Avenue; and
 - b. Adopt Resolution No. 2010-6979 to allow for the abatement of 822 Georgia Street, and authorizing staff to proceed with and perform the necessary abatement of the nuisance and authorizes the staff to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from the 822 Georgia Street; and
6. Staff shall keep an account of the cost of abatement on each separate parcel of land where the abatement work is conducted, and shall submit to the City Council all costs of abatement for their consideration at next available council meeting.

5.3 715 HOLLY AVENUE – NOTICE TO ELIMINATE SUBSTANDARD AND PUBLIC NUISANCE CONDITIONS – ABATEMENT OF AN ABANDONED / INOPERATIVE VEHICLE. (0470-20)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report;
3. Entertain objections or protests;
4. Close the public hearing; and
5. Adopt Resolution No. 2010-6980 authorizing staff to seek legal action to either compel the property owner to abate the inoperative / abandoned vehicle on the property or to obtain an abatement warrant to cause the abatement to be completed by City forces or private contract; and
6. Staff shall keep an account of the cost of abatement on the parcel of land where the abatement work is conducted, and shall submit to the City Council all costs of abatement for their consideration at next available council meeting.

Continued on Next Page

PUBLIC HEARINGS (Continued)

5.4 RESOLUTION NO. 2010-6976 – REVISING THE PARKING AND MISCELLANEOUS FINE SCHEDULE DUE TO STATE LEGISLATION. (0390-55 & 0760-95)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive public testimony and staff report;
3. Close the public hearing; and
4. Adopt City Council Resolution No. 2010-6976.

REPORTS (6.1 - 6.10)

6.1 PROPOSED BSA EAGLE PROJECT PRESENTATION. (0230-70 & 0840-05)

City Manager's Recommendation:

1. Receive report;
2. Receive a presentation from Mr. McClenahan regarding the proposed improvements;
3. Comment and direct staff and Mr. McClenahan regarding the design of the proposed project; and
4. Authorize the City Manager to sign the Eagle Project plan for Mr. McClenahan to continue the project development and construction as approved by City Council and City staff.

6.2 PROPOSED AMENDMENT OF EXCLUSIVE NEGOTIATION AGREEMENT WITH SADBERRY PROPERTIES, INC. (0640-10)

City Manager's Recommendation: Approve an extension to the Negotiation Period for 120 business days for the purpose of entering into a Disposition and Development Agreement with Sudberry Properties, Inc.

6.3 UNITED STATES COAST GUARD (USCG) MOORING BALLAST POINT (MBP) DREDGE PROJECT. (0220-70)

City Manager's Recommendation: Receive the report and comment as necessary and support the USCG Mooring Ballast Point Dredge project subject to implementation of a debris management plan including the use of a grate through which the dredged sand will be placed.

6.4 CONSIDERATION OF MEDICAL MARIJUANA REGULATIONS. (0610-95)

City Manager's Recommendation: Consider proposed options and provide direction to staff so that a draft ordinance (if required) can be presented to the City Council at the January 2011 meeting.

6.5 SAN DIEGO REGION STORM WATER COPERMITTEE REFERENCE CONDITIONS STUDY FOR TOTAL MAXIMUM DAILY LOADS (TMDLS). (0770-85)

City Manager's Recommendation:

1. Receive report;
2. Discuss the merit and drawback of participating in the Reference Study;
3. Give tentative support to the proposed Reference Conditions Study; and
4. Authorize staff to respond to the Copermittees that the City of Imperial Beach will tentatively commit to sharing in the cost of the study.

6.6 RESOLUTION NO. 2010-6981 – AWARDED A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – RTIP STREET IMPROVEMENTS YEAR 6 CIP PROJECT (S10-101). (0720-25)

City Manager's Recommendation: Receive report and adopt resolution.

6.7 RESOLUTION NO. 2010-6974 – AWARDED A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – IMPERIAL BEACH CITY-WIDE STREET LIGHTING UPGRADE (S11-103). (0720-60)

City Manager's Recommendation: Receive report and adopt resolution.

Continued on Next Page

REPORTS (Continued)

6.8 MONTHLY UPDATE REPORT ON THE REDEVELOPMENT OF THE SEACOAST INN HOTEL. (0660-43)

City Manager's Recommendation: Receive the update report on the Seacoast Inn project and provide comment and input as necessary.

6.9 ANNUAL CITY COUNCIL REPRESENTATION ASSIGNMENTS. (0410-50)

City Manager's Recommendation:

1. Mayor appoint/change City Council Representation Assignments for 2011 in accordance with Chapter 2.18.010.C of the I.B.M.C.; and
2. City Council approve Mayor's appointments and changes to City Council Representation Assignments for 2011.

6.10 2011 CITY COUNCIL MEETING AND WORKSHOP CALENDAR. (0410-05)

City Manager's Recommendation:

1. Discuss proposed 2011 Calendar and meeting times for City Council Meetings and Workshops;
2. Approve the 2011 City Council Calendar which includes City Council quarterly workshops on February 9, April 13, July 13, and October 12, 2011; rescheduling of the January 19, 2011 City Council meeting for January 26, 2011; cancellation of the February 2, 2011, September 21, 2011 and January 4, 2012 City Council meetings due to scheduling conflicts; and
3. Adopt Resolution No. 2010-6977 setting the time for City Council Workshops and Meetings.

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.

Jacqueline M. Hald, CMC
City Clerk

DRAFT

MINUTES

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

SEPTEMBER 1, 2010

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

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

CALL TO ORDER

MAYOR JANNEY called the Closed Session Meeting to order at 5:30 p.m.

ROLL CALL

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

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

CLOSED SESSION

MOTION BY BRAGG, SECOND BY KING, TO ADJOURN TO CLOSED SESSION UNDER:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: Unimproved site of 1.15 acres with a paved Class I bike path,
Imperial Beach, CA 91932, APN 616-021-10

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: San Diego County Regional Airport Authority

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

MOTION CARRIED BY THE FOLLOWING VOTE:

**AYES: COUNCILMEMBERS: BRAGG, ROSE, KING, JANNEY
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: MCCOY**

MAYOR JANNEY adjourned the meeting to Closed Session at 5:31 p.m. and he reconvened the meeting to Open Session at 6:00 p.m. Reporting out of Closed Session, CITY ATTORNEY LYON announced direction was given to agency negotiators 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, Rose
Councilmembers absent: McCoy
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**

MAYOR PRO TEM KING reported on his attendance at a town hall meeting at San Diego State University which was sponsored by Move San Diego; he noted a particular concern raised was funding for transportation infrastructure improvements.

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENT

JUNE ENGEL, Branch Manager of the IB Library, announced library staff selected the Imperial Beach Lifeguards to symbolize the City of Imperial Beach on bookmarks that will be available in May for National Beach Safety Month; she announced a poster drawing contest in honor of National Fire Prevention Month will be in collaboration with the Imperial Beach Fire Dept.; and she spoke about the Halloween Costume contest scheduled for October 27.

IRENE CALAHAN spoke in opposition to a Starbucks in Imperial Beach and spoke in support for keeping Sav-U-Foods in Imperial Beach.

PRESENTATIONS (1.1)

**1.1 PRESENTATION REGARDING THE IMPENDING PROJECTS WITHIN SOUTH BAY
NATIONAL WILDLIFE REFUGE. (0150-40)**

CITY MANAGER BROWN introduced the item.

PUBLIC WORKS DIRECTOR LEVIEN gave a report on the item and noted the project will start in September with completion in March.

ANDREW R. YUEN, Project Leader for the San Diego National Wildlife Refuge, discussed the portions of the South San Diego Bay Coastal Wetland Restoration and Enhancement Project that are specific to the San Diego Bay National Wildlife Refuge, which is approximately 300 acres; he also spoke about the construction schedule and public outreach.

EILEEN MAHER, Assistant Environmental Director for Port of San Diego, discussed the portions of the project that are within the Port district.

DAVID CANNON, Engineer for Everest International Consultants Inc., reported on the title and flood analysis.

MAYOR JANNEY expressed appreciation for the information presented and informing the public of the project.

City Council discussion ensued regarding public outreach, including posting permanent signage on information regarding the project while the project is underway and to post the information on the City's website as well as send out the information electronically.

CONSENT CALENDAR (2.1 - 2.4)

Consensus of City Council to pull item No. 2.4 from the agenda for discussion at a future meeting.

MOTION BY BRAGG, SECOND BY ROSE, TO APPROVE CONSENT CALENDAR ITEM NOS. 2.1 THRU 2.3. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

2.1 MINUTES.

Approved the minutes of the Regular City Council Meetings of June 15 and July 7, 2010.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

Ratified the following registers: Accounts Payable Numbers 71470 through 71582 with the subtotal amount of \$1,275,570.50 and Payroll Checks 43014 through 43037 for the pay period ending 08/12/10 with the subtotal amount of \$181,992.94, for a total amount of \$1,457,563.44.

2.3 RESOLUTION NO. FA-10-02 – SETTING REGULAR MEETING SCHEDULE FOR IMPERIAL BEACH PUBLIC FINANCING AUTHORITY. (0417-95)

Adopted resolution.

2.4 RESOLUTION 2010-6934 – AUTHORIZING THE ACCEPTANCE OF CALTRANS RELINQUISHMENT OF PROPERTY TO FACILITATE THE REALIGNMENT OF THE PALM AVENUE/STATE ROUTE (SR) 75 INTERSECTION ADJACENT TO THE PROPOSED 9TH AND PALM REDEVELOPMENT PROJECT. (0150-30 & 0640-20)

Item pulled.

ORDINANCES – INTRODUCTION/FIRST READING (3.1 - 3.2)

3.1 ORDINANCE NO. 2010-1110 – ADDING PROVISIONS TO THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, ADDING CHAPTER 9.80 OF THE IMPERIAL BEACH MUNICIPAL CODE, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS. (0280-95)

The following were submitted as Last Minute Agenda Information:

- Memorandum from Community Development Director Wade and Code Compliance Officer Garcias regarding change to staff report and ordinance.
- Memorandum from Community Development Director Wade and Code Compliance Officer Garcias regarding added language to Ordinance.

CITY MANAGER BROWN reported on the item.

ROBERT DEPIANO, attorney for the owner of Palm Avenue Books, Inc., was in attendance to respond to questions.

MAYOR JANNEY called for introduction of Ordinance No. 2010-1110.

CITY CLERK HALD read the title of Ordinance No. 2010-1110, "An Ordinance of the City Council of the City of Imperial Beach, California, ADDING CHAPTER 9.80 TO THE IMPERIAL BEACH MUNICIPAL CODE PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS."

MOTION BY KING, SECOND BY ROSE, TO DISPENSE WITH FIRST READING AND INTRODUCTION OF ORDINANCE NO. 2010-1110 BY TITLE ONLY AND WAIVE FURTHER READING, SET THE MATTER FOR ADOPTION AT THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING, AND AUTHORIZE THE PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

3.2 ORDINANCE NO. 2010-1109 – AMENDING THE PROVISIONS OF THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, AMENDING SECTION 1.12.020 OF CHAPTER 1.12 AND SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES. (0470-95)

CITY MANAGER BROWN reported on the item.

MAYOR JANNEY called for introduction of Ordinance No. 2010-1109.

CITY CLERK HALD read the title of Ordinance No. 2010-1109, "An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING SECTION 1.12.020 OF CHAPTER 1.12 AND SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES."

MOTION BY KING, SECOND BY BRAGG, TO DISPENSE WITH FIRST READING AND INTRODUCTION OF ORDINANCE NO. 2010-1109 BY TITLE ONLY AND WAIVE FURTHER READING, SET THE MATTER FOR ADOPTION AT THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING, AND AUTHORIZE THE PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

ORDINANCES – SECOND READING & ADOPTION (4)

None.

PUBLIC HEARINGS (5.1 - 5.2)

5.1 AT&T MOBILITY (APPLICANT)/EMMANUEL DANIEL (OWNER); CONDITIONAL USE PERMIT (CUP 080046), DESIGN REVIEW CASE (DRC 080047), AND SITE PLAN REVIEW (SPR 080048) TO INSTALL A TELECOMMUNICATION FACILITY IN THE FORM OF A CLOCK TOWER ATTACHED TO AN EXISTING COMMERCIAL BUILDING LOCATED AT 1497 13th STREET (APN 633-223-47-00) IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 992. (0600-20 & 0800-50)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item.

ASSOCIATE PLANNER FOLTZ gave a PowerPoint presentation on the item and noted the following corrections to the Resolution No. 2010-6928, Conditions of Approval No. 23:

- Change the CUP No. to 080046; and
- Change the CUP expiration date to September 1, 2020.

City Council spoke positively about the quality of the design.

MAYOR JANNEY closed the public hearing.

MOTION BY BRAGG, SECOND BY ROSE, TO ADOPT RESOLUTION NO. 2010-6928, APPROVING CONDITIONAL USE PERMIT (CUP 080046), DESIGN REVIEW CASE (DRC 080047), AND SITE PLAN REVIEW (SPR 080048), WHICH MAKES THE NECESSARY FINDINGS AND PROVIDES CONDITIONS OF APPROVAL IN COMPLIANCE WITH LOCAL AND STATE REQUIREMENTS WITH AMENDMENTS. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

5.2 RESOLUTION NO. R-10-227 – RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA. (0640-20)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item and announced correspondence from Charlie Campbell was submitted as Last Minute Agenda Information.

CHARLIE CAMPBELL, Esq. of Point Loma Law, representing Shawki Bachoua dba Southbay Drugs, expressed concern about Mr. Bachoua losing the right to compensation for loss of good will and losing the right to compensation for the value of his leasehold interest; he suggested the Agency take the unpaid rent, dismiss the appeal of the unlawful detainer, and accept Mr. Bachoua's apology for not paying rent.

CITY ATTORNEY SJOBLUM stated the two actions referred to by Mr. Campbell (the unlawful detainer which is currently under appeal and the decision to condemn the leasehold interest) are independent of each other, any specifics on how the two actions relate should be discussed in Closed Session; he further stated that the unlawful detainer action and appeal occurred because Mr. Bachoua breached the lease for failure to pay rent, the lease is breached and is no longer valid, and compensation is no longer required.

COUNCILMEMBER ROSE reiterated a correlation between the two issues should be discussed in Closed Session and questioned how to proceed.

CITY ATTORNEY SJOBLUM responded the issue before City Council is the Resolution of Necessity, a matter of whether the Agency wants to proceed with the action to condemn the leasehold; the issue of what will happen if the appeal is successful is a matter of compensation

and happens later in the process of the eminent domain action; he reiterated that the two matters raised are two separate issues and have no bearing on the other.

MAYOR PRO TEM KING expressed concern about the comment made by the claimant's attorney that a misunderstanding led the owner to not make payments and questioned denial of compensation.

MOTION BY JANNEY, SECOND ROSE, TO ADJOURN TO CLOSED SESSION. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

CITY COUNCIL adjourned to Closed Session at 7:10 p.m. and reconvened the meeting to Open Session at 7:22 p.m.

CITY ATTORNEY LYON reported out of Closed Session, pursuant to Government Code Section 54956.9(c), no reportable action was taken.

MAYOR JANNEY stated the item before City Council is the adoption of Resolution No. R-10-227 and issues outside the resolution do not pertain to the item.

MOTION BY ROSE, SECOND BY BRAGG, TO ADOPT RESOLUTION NO. R-10-227 – RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

MAYOR JANNEY closed the public hearing.

MAYOR JANNEY called a recess at 7:25 p.m. and reconvened the meeting to Open Session at 7:32 p.m.

MOTION BY JANNEY, SECOND BY ROSE, TO RECONSIDER ITEM NO. 5.2 AND TO CONTINUE THE PUBLIC HEARING TO THE NEXT CITY COUNCIL MEETING (SEPTEMBER 22, 2010) AT 6:00 P.M.

Discussion ensued.

CITY MANAGER BROWN stated due to legal reasons Item No. 5.2 should be reconsidered at the next City Council meeting.

In response to questions of City Council, CITY ATTORNEY LYON stated there will be a Closed Session related to this item at the September 22 meeting and that there is sufficient amount of time to re-notice the property owner about the public hearing.

VOTES WERE NOW CAST ON ORIGINAL MOTION BY JANNEY, SECOND BY ROSE, TO RECONSIDER ITEM NO. 5.2 AND TO CONTINUE THE PUBLIC HEARING TO THE NEXT CITY COUNCIL MEETING (SEPTEMBER 22, 2010) AT 6:00 P.M. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

REPORTS (6.1 - 6.9)

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

6.7 COMMERCIAL ZONING REVIEW – COMMERCIAL ZONING RECOMMENDATIONS DOCUMENT. (0610-95)

CITY MANAGER BROWN introduced the item; he requested the item be taken at the September 22 meeting as the explanatory document is still under review; staff anticipates availability of the document on Tuesday.

COMMUNITY DEVELOPMENT DIRECTOR WADE stated the e-mail outreach group was informed that the draft document would be distributed to City Council and posted on the City's website on September 7 and the first Community Workshop is tentatively scheduled for September 28.

City Council discussed the need for an ad hoc committee to review the draft document for content during the week of the September 13 and staff would submit changes, if any, to the consultant; they discussed holding an outreach meeting on September 28 with a second meeting on October 7.

MICHAEL CAREY spoke in support of having the current City Council approve the document; he noted concern about limited participation with two community workshops held back to back however, the alternative of extending the review process out longer is not an option.

CITY ATTORNEY LYON stated the issue that the document was not going to be available for City Council to review and approve came about after the agenda was posted and based on City Council's discussion there is an immediate need to take action to form the ad hoc committee to review the document to get the process moving forward.

MOTION BY JANNEY, SECOND BY BRAGG, TO FORM AN AD HOC COMMITTEE OF HIMSELF AND COUNCILMEMBER ROSE TO REVIEW THE DOCUMENT AND GIVE INFORMATION TO CITY MANAGER BROWN ON ANY REVISIONS NECESSARY. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

6.1 REDEVELOPMENT BOND FUNDING. (0340-10)

A memorandum and preliminary drawings from City Manager Brown regarding library renovation and expansion were submitted as Last Minute Agenda Information.

CITY MANAGER BROWN introduced the item.

FINANCE DIRECTOR MCGRANE gave a report on the item; he noted the bond issuer needs to know that City Council has a desire to issue bonds and that there are achievable projects to spend the bond money on.

A majority of City Council spoke in support for the projects referenced in the staff report; it was noted that previously some of the projects were ready to commence but were stopped as a result of the State taking away funds; the priority projects will be determined at a later date; and staff will provide the list of projects to the bond people.

6.2 TIMELINE RELATED TO CONSIDERATION/ADOPTION OF MEDICAL MARIJUANA REGULATIONS. (0610-95)

CITY MANAGER BROWN reviewed the proposed timeline.

Consensus of City Council to approve the timeline and direct staff to proceed accordingly.

6.3 LEAGUE CONFERENCE RESOLUTIONS. (0140-10 & 0460-20)

CITY MANAGER BROWN gave a report on the item.

In response to Councilmember Bragg's request for guidance on Resolution No. 3 (AB 32 and SB 375), MAYOR JANNEY stated that SANDAG has been planning for the proposed changes; and it was suggested that Councilmember Bragg vote based on after hearing the arguments.

6.4 ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT AND ADOPTION OF RESOLUTION NO. 2010-6931 – AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE ARMY CORPS OF ENGINEERS AND THE CITY OF IMPERIAL BEACH. (0150-40 & 0220-70)

A Memorandum of Agreement, and a second revised Memorandum of Agreement, were submitted as Last Minute Agenda Information.

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a report on the item; and responded to concerns of City Council regarding the debris management plan and the different methods to accomplish this.

SCOTT JOHN, of the Army Corps of Engineers, responded to questions of Council and noted the specifications for the dredge is left open as the contractors are the experts and know what their capabilities are and the best way to accomplish the job.

MOTION BY ROSE, SECOND BY KING, TO APPROVE AND ADOPT RESOLUTION NO. 2010-6931 AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF IMPERIAL BEACH SUBJECT TO THE CONDITIONS DESCRIBED THEREIN AND AS SUMMARIZED IN RECOMMENDATION NO. 1 IN THE STAFF REPORT. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

6.5 RESOLUTION NO. 2010-6932 – AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CITY OF IMPERIAL BEACH FOR PARTICIPATION IN THE ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT. (0150-70 & 0220-70)

CITY MANAGER BROWN introduced the item.

MOTION BY BRAGG, SECOND BY KING, TO ADOPT RESOLUTION NO. 2010-6932 – AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF IMPERIAL BEACH TO PARTICIPATE IN THE ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

6.6 RESOLUTION NO. 2010-6929 – AWARDED A CONTRACT FOR CERTAIN PUBLIC WORKS CONTRACT – PUBLIC WORKS ROOF REPAIR CIP (P05-10A). (0910-30)

CITY MANAGER BROWN introduced the item.

MOTION BY ROSE, SECOND BY BRAGG , TO ADOPT RESOLUTION NO. 2010-6929 – AWARDED A CONTRACT FOR AWARDED A CONTRACT FOR CERTAIN PUBLIC WORKS CONTRACT - PUBLIC WORKS ROOF REPAIR CIP (P05-10A). MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

6.8 RESOLUTION NO. R-10-226 – DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF CERTAIN OBLIGATIONS AND DIRECTING CERTAIN ACTIONS; AND RESOLUTION NO. R-10-225 – APPOINTING PROFESSIONAL CONSULTANTS IN CONNECTION WITH PROPOSED TAX ALLOCATION BONDS. (0340-10)

CITY MANAGER BROWN introduced the item.

MOTION BY KING, SECOND BY ROSE, TO ADOPT RESOLUTION NO. R-10-226 – DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF CERTAIN OBLIGATIONS AND DIRECTING CERTAIN ACTIONS; AND RESOLUTION NO. R-10-225 – APPOINTING PROFESSIONAL CONSULTANTS IN CONNECTION WITH PROPOSED TAX ALLOCATION BONDS. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

6.9 WEED ABATEMENT – ABATEMENT COSTS REPORT AND ADOPTION OF RESOLUTION NOS. 2010-6933, 2010-6936 AND 2010-6937 – FINDING AND CONFIRMING ABATEMENT COSTS FOR THE ABATEMENT OF VENUES & RUBBISH, REGARDING THE PROPERTY LOCATED AT 336-338 DAISY AVENUE, 1019 IRIS AVENUE, AND 1174 FLORIDA STREET ARE APPROPRIATE AND ASSESSING COSTS OF ABATEMENT.

CITY MANAGER BROWN introduced the item.

CODE COMPLIANCE OFFICER GARCIAS, along with COMMUNITY DEVELOPMENT DIRECTOR WADE, gave a PowerPoint presentation on the item.

MOTION BY KING, SECOND BY ROSE, TO ADOPT RESOLUTION NOS. 2010-6933, 2010-6936 AND 2010-6937 – FINDING AND CONFIRMING ABATEMENT COSTS FOR THE ABATEMENT OF VENUES & RUBBISH, REGARDING THE PROPERTY LOCATED AT 336-338 DAISY AVENUE, 1019 IRIS AVENUE, AND 1174 FLORIDA STREET ARE APPROPRIATE AND ASSESSING COSTS OF ABATEMENT. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	MCCOY

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 8:47 p.m.

James C. Janney, Mayor

Jacqueline M. Hald, CMC
City Clerk

MINUTES

DRAFT

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

DECEMBER 1, 2010

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

**REGULAR & SPECIAL CLOSED SESSION MEETINGS – 5:15 P.M.
REGULAR MEETING – 6:00 P.M.**

CALL TO ORDER

MAYOR JANNEY called the Regular & Special Closed Session Meetings to order at 5:18 p.m.

ROLL CALL

Councilmembers present: Bragg, McCoy, Rose
Councilmembers absent: None
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 KING, TO ADJOURN TO CLOSED SESSION UNDER:

Pursuant to Government Code Section 54956.8:

Property: 800 Seacoast Drive, Imperial Beach, CA 91932, APN 625-262-01-00
Agency Negotiator: City Manager and City Attorney
Negotiating Parties: Imperial Coast LTD Partnership
Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Pursuant to Government Code Section 54956.9(a):

Number of Cases: 1
Case Name: Stackiewicz v. City of Imperial Beach
Case No. 37-2010-00080002-CU-PT-SC

MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER BRAGG announced she had a potential conflict of interest on the first Closed Session item due to the location of her employment and therefore would not participate in the discussion of that item.

MAYOR JANNEY adjourned the meeting to Closed Session at 5:19 p.m. and he reconvened the meeting to Open Session at 6:00 p.m. Reporting out of Closed Session, CITY ATTORNEY LYON stated regarding the pending litigation matter on the Special Meeting agenda, the Council authorized settlement of litigation; the settlement agreement contains the terms of maintenance and control of the plaintiff's animal; on the second closed session item there was no reportable action.

REGULAR MEETING CALL TO ORDER

MAYOR JANNEY called the Regular Meeting to order at 6:04 p.m.

ROLL CALL

Councilmembers present: Bragg, McCoy, Rose
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

MOTION BY MCCOY, SECOND BY ROSE, TO TAKE ITEM NO. 5.1 AT THE END OF THE AGENDA AND ITEM NO. 6.3 IMMEDIATELY AFTER THE CONSENT CALENDAR. MOTION CARRIED UNANIMOUSLY.

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

None.

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENT

MARY ANN SCHOULTZ expressed concern about activity at the skate park, such as users not wearing helmets and pads; near accidents involving skateboarders, bikers and scooters/razors; and numerous users at one time; she spoke in support of supervision of the skate park; and she noted damage to a fence adjacent to the skate park and alley.

PRESENTATIONS (1)

None.

CONSENT CALENDAR (2.1 - 2.4)

MOTION BY MCCOY, SECOND BY ROSE , TO APPROVE CONSENT CALENDAR ITEM NOS. 2.1 THRU 2.4. MOTION CARRIED UNANIMOUSLY.

A corrected page 5 of the November 17, 2010 minutes (Item No. 2.1) was submitted as Last Minute Agenda Information.

2.1 MINUTES.

Approved the minutes of the Regular City Council Meeting of November 17, 2010, as corrected.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

Ratified the following registers: Accounts Payable Numbers 72098 through 72172 with the subtotal amount of \$641,455.76 and Payroll Checks 43326 through 43364 for the pay period ending 11/04/10 with the subtotal amount of \$147,427.68, for a total amount of \$788,883.44.

- 2.3 RESOLUTION NO. 2010-6972 – ADOPTING, AFFIRMING, AND INCORPORATING BY REFERENCE THE STANDARD CONFLICT OF INTEREST PROVISIONS OF 2 CALIFORNIA CODE OF REGULATIONS SECTION 18730 AND ADOPTING AMENDED AND UPDATED APPENDICES TO THE CONFLICT OF INTEREST CODE OF THE CITY OF IMPERIAL BEACH. (0410-95 & 0420-95)**
Adopted resolution.
- 2.4 LOCAL APPOINTMENTS LIST. (0460-45)**
Approved the Local Appointments List in compliance with Government Code §54972, and authorize the City Clerk to post said list at City Hall and the Library in compliance with Government Code §54973.

REPORTS (6.3)

- 6.3 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT IN AN AMOUNT NOT TO EXCEED \$274,750 FOR THE PREPARATION OF ZONING ORDINANCE AMENDMENTS, GENERAL PLAN AMENDMENTS AND THE ENVIRONMENTAL IMPACT REPORT ASSOCIATED WITH ADOPTION OF THE COMMERCIAL ZONING REVIEW RECOMMENDATIONS OF THE CITY COUNCIL. (0610-95)**

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE reported on the item.

MOTION BY MCCOY, SECOND BY ROSE, TO ADOPT RESOLUTION NO. R-10-238 – AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH AECOM FOR PLANNING AND ENVIRONMENTAL PLANNING CONSULTANT SERVICES TO PREPARE AND PROCESS THE ZONING AND GENERAL PLAN AMENDMENTS AND THE ASSOCIATED ENVIRONMENTAL IMPACT REPORT TO ADOPT THE COMMERCIAL ZONING REVIEW RECOMMENDATIONS. MOTION CARRIED UNANIMOUSLY.

ORDINANCES – INTRODUCTION/FIRST READING (3)

None.

ORDINANCES – SECOND READING & ADOPTION (4.1)

- 4.1 ORDINANCE NO. 2010-1112 – UPDATING CHAPTER 8.32 AMENDING THE CITY’S STANDARD URBAN STORMWATER MITIGATION PLAN (SUSMP) TO INCLUDE CRITERIA FOR HYDROMODIFICATION MANAGEMENT. (0770-85)**

CITY MANAGER BROWN reported on the item.

MAYOR JANNEY called for the reading of the title of Ordinance No. 2010-1112.

CITY CLERK HALD read the title of Ordinance No. 2010-1112, “An Ordinance of the City Council of the City of Imperial Beach, California, UPDATING CHAPTER 8.32 AMENDING THE CITY’S STANDARD URBAN STORMWATER MITIGATION PLAN (SUSMP) TO INCLUDE CRITERIA FOR HYDROMODIFICATION MANAGEMENT.”

MOTION BY MCCOY, SECOND BY ROSE, TO DISPENSE WITH SECOND READING AND ADOPT ORDINANCE NO. 2010-1112 BY TITLE ONLY. MOTION CARRIED UNANIMOUSLY.

ORDINANCES – SECOND READING, ADOPTION & PUBLIC HEARING (4.2 - 4.3)

4.2 ORDINANCE NO. 2010-1113 – ADOPTING THE MODEL CODES CONTAINED IN THE 2010 CALIFORNIA BUILDING STANDARDS CODE (CBSC), PART OF TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS AND THE ADOPTION OF THE 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, INCLUDING LOCAL AMENDMENTS FOR THE CITY OF IMPERIAL BEACH. (0710-95)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN reported on the item.

The public hearing was closed.

MAYOR JANNEY called for the reading of the title of Ordinance No. 2010-1113.

CITY CLERK HALD read the title of Ordinance No. 2010-1113, “An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING TITLES 8 AND 15 OF THE IMPERIAL BEACH MUNICIPAL CODE BY AMENDING CHAPTERS 8.50, 15.06, 15.16, 15.28, AND 15.32, ADDING CHAPTERS 15.02, 15.04, 15.38, AND 15.40 AND REPEALING CHAPTERS 8.88, 15.18, AND 15.36, ALL BY ADOPTING THE CALIFORNIA BUILDING STANDARDS CODE, 2010 EDITION, WITH CERTAIN AMENDMENTS, ADDITIONS, AND DELETIONS, AND ADOPTING THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION.”

MOTION BY MCCOY, SECOND BY ROSE, TO DISPENSE WITH SECOND READING AND ADOPT ORDINANCE NO. 2010-1113 BY TITLE ONLY. MOTION CARRIED UNANIMOUSLY.

4.3 ORDINANCE NO. 2010-1114 – AMENDING CHAPTER 5.20 OF THE IMPERIAL BEACH MUNICIPAL CODE BY ADOPTING THE CALIFORNIA FIRE CODE, 2010 EDITION, AND 2009 INTERNATIONAL FIRE CODE WITH CERTAIN AMENDMENTS, ADDITIONS, AND DELETIONS. (0710-95)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN reported on the item.

MAYOR JANNEY closed the public hearing and called for the reading of the title of Ordinance No. 2010-1114.

CITY CLERK HALD read the title of Ordinance No. 2010-1114, “An Ordinance of the City Council of the City of Imperial Beach, California, AMENDING CHAPTER 5.20 OF THE IMPERIAL BEACH MUNICIPAL CODE BY ADOPTING THE CALIFORNIA FIRE CODE, 2010 EDITION, AND 2009 INTERNATIONAL FIRE CODE WITH CERTAIN AMENDMENTS, ADDITIONS, AND DELETIONS.”

MOTION BY MCCOY, SECOND BY ROSE, TO DISPENSE WITH SECOND READING AND ADOPT ORDINANCE NO. 2010-1114 BY TITLE ONLY. MOTION CARRIED UNANIMOUSLY.

REPORTS (6.1 - 6.2)

6.1 RESOLUTION NO. 2010-6971 – 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 DECEMBER 15, 2010 FOR THE PROPERTIES LOCATED AT 715 HOLLY AVENUE AND 822 GEORGIA STREET. (0470-20)

CITY MANAGER BROWN introduced the item.

CODE COMPLIANCE OFFICER GARCIAS gave a PowerPoint presentation on the item; and responded to questions of Council regarding assessments against properties and how the City recovers its money; attempts at locating the owner of the property at 715 Holly Ave.; and about an abandoned vehicle located at 715 Holly Ave.

MOTION BY MCCOY, SECOND BY ROSE , TO ADOPT RESOLUTION NO. 2010-6971 – 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 DECEMBER 15, 2010 FOR THE PROPERTIES LOCATED AT 715 HOLLY AVENUE AND 822 GEORGIA STREET. MOTION CARRIED UNANIMOUSLY.

6.2 NEW STREET BANNERS. (0160-40 & 0720-10)

CITY MANAGER BROWN reported on the item

PUBLIC WORKS DIRECTOR LEVIEN and REDEVELOPMENT ASSISTANT PROJECT MANAGER CUMMING displayed the banner designs via PowerPoint presentation.

City Council reviewed the proposed banner designs.

CONSENSUS OF CITY COUNCIL AS FOLLOWS:

- **FIRST BANNER (SUN): CHANGE THE PHOTO IMAGE TO A SKATER**
- **SECOND BANNER (SAND): APPROVED AS PRESENTED**
- **THIRD BANNER (SURF): CHANGE THE PHOTO IMAGE TO ONE THAT CLEARLY INDICATES A SURFER**
- **FOURTH (LIFE): APPROVED AS PRESENTED**
- **FIFTH (WALK): APPROVED AS PRESENTED**

CITY COUNCIL FURTHER DIRECTED STAFF TO CONSIDER LOCAL BIDS THAT ARE OF EQUAL PRICE AND QUALITY PRODUCT.

PUBLIC HEARINGS (5.1)

5.1 APPROVING AN ADDENDUM TO THE FEIR AND A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY AND IMPERIAL COAST, L.P., AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH DISPOSITION AND DEVELOPMENT AGREEMENT. (0660-43)

COUNCILMEMBER BRAGG had a potential conflict of interest on the item due to the location of her employment, and she left Council Chambers at 6:47 p.m.

The following documents were submitted as last Minute Agenda Information:

- a. Revised Attachment No. 1 to DDA: Site Map
- b. Attachment 10 – Exhibit B to DDA: Site Map

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a PowerPoint presentation on the item.

CITY CLERK HALD announced no speaker slips were submitted.

COMMUNITY DEVELOPMENT DIRECTOR WADE responded to questions of Council regarding buyback cost; and noted that if financing were in place and the building permit issued, the construction can begin as early as the beginning of next year; the agreement helps ensure protection against any possibility of having a vacant property; he also spoke of provisions that it must operate as a hotel.

ALLISON ROLFE, Project Manager for Pacifica, spoke about the specialized marketing that will take place to attract people to the hotel; stated that the hotel has yet to be named; reported on the financing status of the hotel; and thanked staff for their efforts.

Discussion ensued regarding the obstacles faced to get to this achievement and how the hotel would be an economic stimulus for the City.

MAYOR JANNEY closed the public hearing.

MOTION BY MCCOY, SECOND BY ROSE, TO ADOPT CITY COUNCIL RESOLUTION NO. 2010-6970 – APPROVING AN ADDENDUM TO THE FEIR AND A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY AND IMPERIAL COAST, L.P., AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH DISPOSITION AND DEVELOPMENT AGREEMENT.

MOTION CARRIED BY THE FOLLOWING VOTE:

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

MOTION BY MCCOY, SECOND BY ROSE, TO ADOPT REDEVELOPMENT AGENCY RESOLUTION NO. R-10-237 – APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST, L.P., AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH DISPOSITION AND DEVELOPMENT AGREEMENT. MOTION CARRIED BY THE FOLLOWING VOTE:

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

MAYOR JANNEY expressed appreciation to Councilmember Rose and Councilmember McCoy for their years of dedicated service to the City of Imperial Beach.

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 7:30 p.m.

James C. Janney, Mayor

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: December 15, 2010

ORIGINATING DEPT.: Michael McGrane *MY*
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	Description
City of San Diego	72182	\$589,045.00	Law Enforcement Services for Sept. 2010
Newest Construction Co	72203	\$106,596.00	Pump Station/Manhole Repair
Weston Solutions	72215	\$145,602.19	Tijuana River Quality Study

ENVIRONMENTAL IMPACT

Not a project as defined by CEQA.

The following registers are submitted for Council ratification.

WARRANT # DATE AMOUNT

Accounts Payable

72173-72217	11/24/10	\$ 1,050,148.11
72218-72260	12/01/10	70,570.75
Sub-Total		\$ 1,120,718.86

Payroll Checks:

43365-43399	P.P.E. 11/18/2010	\$	144,191.17
		\$	<u>144,191.17</u>
	TOTAL	\$	<u>1,264,910.03</u>

FISCAL IMPACT:

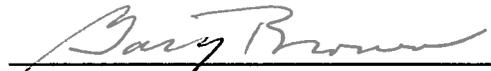
Warrants are issued from budgeted funds.

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 12/06/2010, 11:04:38
 PROGRAM: GM350L
 CITY OF IMPERIAL BEACH

A/P CHECKS BY PERIOD AND YEAR
 FROM 11/24/2010 TO 12/02/2010

BANK CODE 00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
11/24/2010	72173	ADT SECURITY SERVICES, INC.	103			80.04	
101-6010-451.21-04	11/06/2010	DECEMBER 2010	35854557	110071	05/2011	80.04	
11/24/2010	72174	AFLAC	120			844.28	
101-0000-209.01-13	11/10/2010	PR AP PPE 11/4/10	20101110		05/2011	422.14	
101-0000-209.01-13	11/24/2010	PR AP PPE 11/18/10	20101124		05/2011	422.14	
11/24/2010	72175	AGRICULTURAL PEST CONTROL	123			95.00	
101-6020-452.21-04	10/26/2010	OCTOBER 2010	230024	110058	04/2011	95.00	
11/24/2010	72176	BDS ENGINEERING INC	372			2,926.00	
101-0000-221.01-02	11/04/2010	OCTOBER 2010 PLAN CHECK	10-02J		05/2011	809.00	
101-0000-221.01-02	11/04/2010	OCTOBER 2010 PLAN CHECK	10-02J		05/2011	139.00	
101-0000-221.01-02	11/04/2010	OCTOBER 2010 PLAN CHECK	10-02J		05/2011	970.00	
202-5016-531.20-06	11/04/2010	OCTOBER 2010-ST IMPRVMENTS	09-40I	010859	05/2011	1,008.00	
11/24/2010	72177	BUCCOLA ENGINEERING, INC.	2281			2,340.00	
405-1260-513.20-06	11/01/2010	IB SKATEPARSTAKE PERIMETE	10208	110473	05/2011	2,340.00	
11/24/2010	72178	CALIFORNIA ALUMINUM & VINYL WI	1915			1,451.75	
248-1920-519.20-06	10/07/2010	CLEAN&GREEN-386 DAISY AVE	10072010-3	110477	04/2011	1,451.75	
<i>VOIDED CHECK # 72179</i>							
11/24/2010	72180	CALIFORNIA AMERICAN WATER	612			8,747.95	
101-3030-423.27-02	11/05/2010	05-0155019-8 09/30-11/01	11-24-2010		05/2011	20.21	
405-5030-433.27-02	11/05/2010	05-0155037-0 10/04-11/02	11-24-2010		05/2011	15.15	
601-5050-436.27-02	11/17/2010	05-0392478-9 10/04-11/02	12-06-2010		05/2011	110.20	
601-5060-436.27-02	11/05/2010	05-0505362-9 09/27-11/02	11-24-2010		05/2011	200.59	
601-5060-436.27-02	11/10/2010	05-0101092-0 09/08-11/05	11-29-2010		05/2011	15.99	
101-5020-432.27-02	11/10/2010	05-0102217-2 09/08-11/05	11-29-2010		05/2011	286.17	
101-6020-452.27-02	11/10/2010	05-0102503-5 09/08-11/05	11-29-2010		05/2011	289.04	
101-6020-452.27-02	11/10/2010	05-0102504-3 09/08-11/05	11-29-2010		05/2011	12.76	
101-5010-431.27-02	11/10/2010	05-0102729-6 09/08-11/05	11-29-2010		05/2011	642.52	
101-6020-452.27-02	11/11/2010	05-0106225-1 09/09-11/08	11-30-2010		05/2011	19.21	
101-6020-452.27-02	11/11/2010	05-0106249-1 09/09-11/08	11-30-2010		05/2011	12.76	
101-6020-452.27-02	11/11/2010	05-0106336-6 09/09-11/08	11-30-2010		05/2011	25.66	
101-6020-452.27-02	11/11/2010	05-0106337-4 09/09-11/08	11-30-2010		05/2011	22.42	
101-6020-452.27-02	11/12/2010	05-0109756-2 09/10-11/09	12-01-2010		05/2011	569.36	
215-6026-452.27-02	11/09/2010	05-0402959-6 09/07-11/04	11-29-2010		05/2011	47.73	
405-1260-413.27-02	11/12/2010	05-0536450-5 09/10-11/09	12-01-2010		05/2011	223.79	
101-6020-452.27-02	11/17/2010	05-0114612-0 09/16-11/12	12-06-2010		05/2011	78.33	
101-5010-431.27-02	11/16/2010	05-0114717-7 09/15-11/11	12-06-2010		05/2011	9.54	
101-5010-431.27-02	11/16/2010	05-0115202-9 09/15-11/11	12-06-2010		05/2011	38.54	
101-6020-452.27-02	11/16/2010	05-0115205-2 09/15-11/11	12-06-2010		05/2011	1,299.83	
101-1910-419.27-02	11/16/2010	05-0115206-0 09/15-11/11	12-06-2010		05/2011	334.16	
101-1910-419.27-02	11/16/2010	05-0115208-6 09/15-11/11	12-06-2010		05/2011	150.49	
101-1910-419.27-02	11/16/2010	05-0115210-2 09/15-11/11	12-06-2010		05/2011	30.31	
101-3020-422.27-02	11/16/2010	05-0115211-0 09/15-11/11	12-06-2010		05/2011	179.50	
101-5010-431.27-02	11/16/2010	05-0115214-4 09/15-11/11	12-06-2010		05/2011	15.99	
601-5060-436.27-02	11/16/2010	05-0115249-0 09/15-11/11	12-06-2010		05/2011	12.76	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-5010-431.27-02	11/17/2010	05-0115949-5	09/16-11/12	12-06-2010	05/2011	12.76
101-5010-431.27-02	11/17/2010	05-0115950-3	09/16-11/12	12-06-2010	05/2011	25.66
101-5010-431.27-02	11/17/2010	05-0116368-7	09/16-11/12	12-06-2010	05/2011	25.66
101-6020-452.27-02	11/17/2010	05-0117419-7	09/16-11/12	12-06-2010	05/2011	26.30
101-5010-431.27-02	11/15/2010	05-0110529-0	09/14-11/10	12-06-2010	05/2011	54.66
101-6020-452.27-02	11/15/2010	05-0111454-0	09/14-11/10	12-06-2010	05/2011	15.99
101-1910-419.27-02	11/15/2010	05-0111478-9	09/14-11/10	12-06-2010	05/2011	98.94
101-6020-452.27-02	11/15/2010	05-0111479-7	09/14-11/10	12-06-2010	05/2011	2,588.68
101-5010-431.27-02	11/15/2010	05-0111480-5	09/14-11/10	12-06-2010	05/2011	269.72
101-5020-432.27-02	11/16/2010	05-0424056-5	09/15-11/11	12-06-2010	05/2011	82.83
101-6020-452.27-02	11/16/2010	05-0477133-8	09/15-11/11	12-06-2010	05/2011	321.60
405-1260-413.27-02	11/19/2010	05-0536451-3	09/17-11/16	12-08-2010	05/2011	515.34
405-1260-413.27-02	11/19/2010	05-0546597-1	09/17-11/16	12-08-2010	05/2011	46.80
11/24/2010	72181	CALIFORNIA BANK & TRUST	2264			11,844.00
601-5060-536.20-06	10/31/2010	PUMP STATION/MANHOLE REPA	00002R	110312	04/2011	11,844.00
11/24/2010	72182	CITY OF SAN DIEGO	896			589,045.00
601-5060-436.21-04	10/27/2010	JUL-SEP 2010 METRO SEWER	1000015992		05/2011	589,045.00
11/24/2010	72183	COLE OFFICE PRODUCTS INC	1400			1,283.25
101-1920-419.30-01	11/08/2010	COPY PAPER	298643-0	110550	05/2011	1,283.25
11/24/2010	72184	COLONIAL LIFE & ACCIDENT	941			266.88
101-0000-209.01-13	11/10/2010	PR AP PPE 11/4/10	20101110		05/2011	133.44
101-0000-209.01-13	11/24/2010	PR AP PPE 11/18/10	20101124		05/2011	133.44
11/24/2010	72185	COUNTY OF SAN DIEGO RCS	1065			14,282.30
101-3010-421.21-25	11/01/2010	OCTOBER 2010	11CTOFIBN04	110628	05/2011	2,325.50
101-3020-422.21-25	11/01/2010	OCTOBER 2010	11CTOFIBN04	110628	05/2011	344.50
101-3030-423.20-06	11/01/2010	OCTOBER 2010	11CTOFIBN04	110628	05/2011	819.80
101-3010-421.21-25	10/01/2010	SEPTEMBER 2010	11CTOFIBN03	110628	04/2011	2,325.50
101-3020-422.21-25	10/01/2010	SEPTEMBER 2010	11CTOFIBN03	110628	04/2011	344.50
101-3030-423.20-06	10/01/2010	SEPTEMBER 2010	11CTOFIBN03	110628	04/2011	927.50
101-3010-421.21-25	09/01/2010	AUGUST 2010	11CTOFIBN02	110628	03/2011	2,325.50
101-3020-422.21-25	09/01/2010	AUGUST 2010	11CTOFIBN02	110628	03/2011	344.50
101-3030-423.20-06	09/01/2010	AUGUST 2010	11CTOFIBN02	110628	03/2011	927.50
101-3010-421.21-25	08/01/2010	JULY 2010	11CTOFIBN01	110628	02/2011	2,325.50
101-3020-422.21-25	08/01/2010	JULY 2010	11CTOFIBN01	110628	02/2011	344.50
101-3030-423.20-06	08/01/2010	JULY 2010	11CTOFIBN01	110628	02/2011	927.50
11/24/2010	72186	COX COMMUNICATIONS	1073			125.27
101-6010-451.29-04	11/09/2010	11/13-12/12 3110015531401	12-03-2010	110130	05/2011	125.27
11/24/2010	72187	FENCECORP, INC.	2243			14,873.76
408-5020-532.20-06	07/29/2010	SOCCER FIELD FENCE INSTAL	11466	011170	01/2011	14,873.76
11/24/2010	72188	FORDYCE CONSTRUCTION, INC.	2262			60,101.59
101-6010-551.20-06	11/04/2010	IB SKATE PARK THRU 11/04	2	110325	05/2011	29,987.97
405-1260-513.20-06	11/04/2010	IB SKATE PARK THRU 11/04	2	110325	05/2011	30,113.62

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
11/24/2010	72189	FORDYCE CONSTRUCTION, INC.	2265			6,677.96
405-1260-513.20-06	11/04/2010	IB SKATEPARK	2 RETENTION	110326	05/2011	6,677.96
11/24/2010	72190	FRASER & ASSOCIATES	2295			21,725.00
405-1260-413.20-06	11/16/2010	NOV 2010 BOND SERVICES	11-16-2010	110629	05/2011	21,725.00
11/24/2010	72191	GEOCON INC.	2206			394.00
405-1260-513.20-06	04/20/2010	VET'S PARK SOCCER FIELD	1003147	010885	01/2011	394.00
11/24/2010	72192	GLOBAL BUSINESS CONSULTANTS	2			53.00
101-0000-321.72-10	11/17/2010	DENIED BUSINESS LICENSE	0009179		05/2011	53.00
11/24/2010	72193	GRAINGER	1051			516.27
405-5030-433.30-02	11/09/2010	SAFETY EYEWEAR	9391878445	110038	05/2011	20.27
101-1910-419.30-22	11/09/2010	DRILL BIT	9391890143	110038	05/2011	8.47
101-1910-419.28-01	11/10/2010	BOLT, CHAIN	9392146495	110038	05/2011	36.26
405-5030-433.30-02	11/10/2010	SAFETY EYEWEAR	9392146503	110038	05/2011	40.54
101-1910-419.30-02	10/25/2010	LAMPS	9379024012	110038	04/2011	121.73
101-1910-419.30-02	11/12/2010	SAW BLADE	9394147657	110038	05/2011	48.70
101-1910-419.30-02	11/16/2010	CORE/COIL BALLAST KIT	9396516370	110038	05/2011	199.83
101-6040-454.30-02	11/18/2010	RIVETS	9398762790	110038	05/2011	40.47
11/24/2010	72194	GUILLERMO NUNEZ	2291			2,550.00
248-1920-519.20-06	11/12/2010	CLEAN&GREEN-133 CITRUS	804	110620	05/2011	2,550.00
11/24/2010	72195	I B FIREFIGHTERS ASSOCIATION	214			216.50
101-0000-209.01-08	11/24/2010	PR AP PPE 11/18/10	20101124		05/2011	216.50
11/24/2010	72196	ICMA RETIREMENT TRUST 457	242			5,270.74
101-0000-209.01-10	11/24/2010	PR AP PPE 11/18/10	20101124		05/2011	5,270.74
11/24/2010	72197	IMPERIAL BEACH TROPHIES	319			54.92
101-6010-451.30-02	11/08/2010	IB TROPHIES&AWARDS CUSTOM	3396	F11064	05/2011	54.92
11/24/2010	72198	JETER SYSTEMS	483			50.32
101-1210-413.30-01	11/02/2010	LABEL PROTECTORS	1961990	F11062	05/2011	50.32
11/24/2010	72199	JOHN DEERE LANDSCAPES	1986			1,233.38
101-6020-452.30-02	10/21/2010	BUBBLERS/ADAPTERS	56267677	110051	04/2011	251.01
101-6020-452.30-02	10/26/2010	HAND PUMP PVC FITTINGS	56303956	110051	04/2011	56.43
101-6040-454.30-02	11/03/2010	2 CYCLE OIL	56378525	110051	05/2011	70.84
101-6020-452.30-02	11/01/2010	PRODUCT REPAIR	56356983	110051	05/2011	108.75
405-1260-513.20-06	11/08/2010	METAL CABINT/PEDESTAL	56408296	110051	05/2011	688.55
405-1260-513.20-06	11/09/2010	GROUNDING ROD/CLAMP	56418486	110051	05/2011	25.72
101-6040-454.30-02	11/18/2010	TREE STAKE TREATMENT	56487327	110051	05/2011	32.08
11/24/2010	72200	KANE, BALLMER & BERKMAN	1828			10,400.00
245-1240-513.20-06	11/01/2010	AMERICAN LEGION ENA	15821	F11066	05/2011	40.00
101-0000-221.01-02	11/01/2010	NOVEMBER 2010 SEACOAST IN	15822		05/2011	10,360.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
11/24/2010	72201	KEYSER MARSTON ASSOC INC	620				7,406.88
101-0000-221.01-02	11/02/2010	OCTOBER 2010 SEACOAST	0023016		05/2011		7,406.88
11/24/2010	72202	MICHAL PIASECKI CONSULTING	1795				7,200.00
101-1210-413.20-06	11/01/2010	OCTOBER 2010 PW DEPT	144	110036	05/2011		135.00
101-5020-532.20-06	11/01/2010	OCTOBER 2010 PW DEPT	144	110036	05/2011		225.00
405-1260-513.20-06	11/01/2010	OCTOBER 2010 PW DEPT	144	110036	05/2011		360.00
405-1260-513.20-06	11/01/2010	OCTOBER 2010 PW DEPT	144	110036	05/2011		6,480.00
11/24/2010	72203	NEWEST CONSTRUCTION COMPANY,IN	1719				106,596.00
601-5060-536.20-06	10/31/2010	PUMP STA & MANHOLE REPAIR	00002	110311	04/2011		106,596.00
11/24/2010	72204	PRAXAIR DISTRIBUTION INC	1652				19.30
101-6040-454.30-02	11/01/2010	WELDING ROD	38028702	110209	05/2011		19.30
11/24/2010	72205	SANTOS GUTIERREZ	2216				8,012.50
248-1920-519.20-06	11/17/2010	CLEAN&GREEN-813 EMORY ST	11-17-2010	110458	05/2011		8,012.50
11/24/2010	72206	SEIU LOCAL 221	1821				1,315.87
101-0000-209.01-08	11/24/2010	PR AP PPE 11/18/10	20101124		05/2011		1,315.87
11/24/2010	72207	SKS INC.	412				5,162.11
501-1921-419.28-15	11/12/2010	1193 G REG/502.5 G DIESEL	1236784-IN	110104	05/2011		5,162.11
11/24/2010	72208	SLOAN ELECTRIC COMPANY	417				103.31
601-5060-436.28-01	11/02/2010	MITSI KEYPAD	0058252	110119	05/2011		103.31
11/24/2010	72209	SPRINT	2040				304.44
101-3030-423.27-05	11/15/2010	10/12/2010-11/11/2010	699898810-036		05/2011		304.44
11/24/2010	72210	STANDARD ELECTRONICS	504				90.00
101-1910-419.20-23	11/05/2010	QUARTERLY MONITORING	14601	110061	05/2011		90.00
11/24/2010	72211	TRAFFIC CONTROL SERVICE INC.	684				243.88
101-5010-431.21-23	10/26/2010	"UNEVEN PAVEMENT" SIGNS	998987	110039	04/2011		102.31
101-5010-431.21-23	11/10/2010	12GA ANCHORS	1001326	110039	05/2011		141.57
11/24/2010	72212	VORTEX INDUSTRIES, INC.	786				4,277.76
101-1910-419.21-04	10/19/2010	FD SPRING BARREL PLUS REP	11-561065-1	110564	04/2011		4,277.76
11/24/2010	72213	WEST COAST APPLIANCE SERVICES,	2045				5,776.24
248-1920-519.20-06	10/25/2010	CLEAN&GREEN-133 CITRUS AV	20627	110476	04/2011		2,825.37
248-1920-519.20-06	10/25/2010	CLEAN&GREEN-1213 13TH ST	20778F	110475	04/2011		2,950.87
11/24/2010	72214	WEST GROUP CTR	826				120.36
101-1020-411.28-14	11/01/2010	OCTOBER 2010	821605773	110232	05/2011		120.36
11/24/2010	72215	WESTON SOLUTIONS INC.	2016				145,602.19
101-5050-535.20-06	09/21/2010	TJ RIVER QUALITY 2010	AUG2010-01512 R	011171	03/2011		122,133.43

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-5050-535.20-06	09/21/2010	TJ RIVER QUALITY 2010	SEP2010-01464 R	011171	03/2011	23,468.76
11/24/2010	72216	WHITE CAP CONSTRUCTION SUPPLY	1434			135.33
101-5010-431.30-02	11/04/2010	WATTLE FIBER ROLL	15046792	110033	05/2011	135.33
11/24/2010	72217	ZUMAR INDUSTRIED INC.	875			332.78
101-5010-431.21-23	11/12/2010	SIGN POSTS/CROSSPIECE	0126411	110032	05/2011	332.78
12/01/2010	72218	ACE UNIFORMS & ACCESSORIES INC	1571			16.31
101-3020-422.25-03	10/26/2010	SANTOS,T-FLAG PATCH/SEWIN	51687	110407	04/2011	16.31
12/01/2010	72219	ADVANTAGE ENVIROMENTAL CONSULT	2296			18,978.00
101-0000-221.01-02	11/09/2010	ENVIRO SITE ASSASSMENT-	9016		05/2011	2,200.00
408-1920-519.20-06	11/04/2010	STORAGE TANK EXCAVATION	8969	110627	05/2011	16,778.00
12/01/2010	72220	AFFORDABLE RAINGUTTERS	2232			790.75
248-1920-519.20-06	11/29/2010	CLEAN&GREEN-133 CITRUS	16169	110622	05/2011	790.75
12/01/2010	72221	ASBURY ENVIRONMENTAL SERVICES	277			316.58
101-5040-434.21-04	11/05/2010	P/U USED BALLASTS/LIGHTS	130355489	110022	05/2011	316.58
12/01/2010	72222	AT&T MOBILITY	1866			878.52
101-1230-413.27-05	11/23/2010	287016633295 OCT/NOV 10	X11232010		05/2011	119.43
101-3050-425.27-05	11/23/2010	287019473995 OCT/NOV 10	X11232010		05/2011	135.89
101-3040-424.27-05	11/23/2010	287015635717 OCT/NOV 10	X11232010		05/2011	97.24
503-1923-419.27-05	11/23/2010	287015635717 OCT/NOV 10	X11232010		05/2011	284.24
101-3020-422.27-05	11/23/2010	287015635717 OCT/NOV 10	X11232010		05/2011	155.43
101-5020-432.27-05	11/23/2010	287015635717 OCT/NOV 10	X11232010		05/2011	86.29
12/01/2010	72223	AT&T TELECONFERENCE SERVICES	1827			146.16
101-1110-412.27-04	11/01/2010	CONFERENCE CALL ON SEACOA	11-01-2010	F11069	05/2011	146.16
12/01/2010	72224	AUNT ELLENS WATER	307			100.00
101-3020-422.30-02	11/01/2010	WATER 08/03/10-11/15/10	110110	110404	05/2011	100.00
12/01/2010	72225	CALIF ELECTRIC SUPPLY	609			126.13
101-6040-454.30-02	11/05/2010	GUTH REPLACEMENT LENS	1069-610908	110044	05/2011	126.13
12/01/2010	72226	CALIFORNIA ALUMINUM & VINYL WI	1915			3,736.50
248-1920-519.20-06	11/01/2010	CLEAN&GREEN-620 SILVER ST	11012010-2	110637	05/2011	3,736.50
12/01/2010	72227	CCT TECHNOLOGIES, INC.	2289			5,576.27
503-1923-519.50-04	11/16/2010	TAPE AUTOLOADER	209277	110557	05/2011	5,576.27
12/01/2010	72228	CHICAGO TITLE INSUR CO	779			1,000.00
248-1920-519.20-06	11/12/2010	PRE TITLE RPT-BAKER,DORTH	371014393 P14	110623	05/2011	500.00
248-1920-519.20-06	11/12/2010	337 EVERGREEN AVENUE	737114394 P14	110623	05/2011	500.00
12/01/2010	72229	CITY OF CHULA VISTA	823			12,636.56
101-3050-425.21-04	10/26/2010	SEPT 2010 A/C	AR129321		05/2011	12,636.56

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
12/01/2010	72230	COUNTY RECORDER	1818			50.00
101-3050-425.21-04	11/15/2010	NOE 555 FLORENCE ST -ACP	MF 1058		05/2011	50.00
12/01/2010	72231	DATA FLOW	1902			203.41
101-1210-413.30-01	11/04/2010	LASER W-2 4UP BLANK W/INS	58276	F11067	05/2011	203.41
12/01/2010	72232	CULLIGAN WATER CO. OF SAN	DIEG 1112			18.75
101-1210-413.30-02	11/17/2010	DECEMBER 2010	07020474	110009	05/2011	18.75
12/01/2010	72233	D.A.R. CONTRACTORS	1122			347.00
101-3050-425.20-06	11/03/2010	OCTOBER 2010	000109	110205	05/2011	347.00
12/01/2010	72234	DATAQUICK	1134			283.75
101-1210-413.21-04	11/01/2010	OCTOBER 2010	B1-1871407	110072	05/2011	8.50
101-3020-422.21-04	11/01/2010	OCTOBER 2010	B1-1871407	110072	05/2011	118.50
101-3070-427.21-04	11/01/2010	OCTOBER 2010	B1-1871407	110072	05/2011	156.75
12/01/2010	72235	DONALD STARR	2261			7,500.00
408-1920-519.20-06	10/18/2010	1070 13 ST/1293/99 IB BLV	10-18-2010	110636	04/2011	5,000.00
408-1920-519.20-06	10/18/2010	1070 13TH/1293/99 IB BLVD	10-18-2010	110636	04/2011	2,500.00
12/01/2010	72236	GO-STAFF, INC.	2031			2,552.52
101-1210-413.21-01	11/16/2010	DURAN,A W/E 11/14/10	77361	110078	05/2011	480.00
101-1110-412.21-01	11/09/2010	MENDOZA,L-W/E 11/07/10	77155	110324	05/2011	992.52
101-3020-422.21-01	11/02/2010	ROCHER,J W/E 10/31/2010	76935	110149	05/2011	360.00
101-3020-422.21-01	11/09/2010	ROCHER,J W/E 11/07/2010	77153	110149	05/2011	240.00
101-1210-413.21-01	11/23/2010	DURAN,A W/E 11/21/10	77581	110078	05/2011	480.00
12/01/2010	72237	GOOGLE, INC.	2009			280.00
503-1923-419.21-04	11/05/2010	OCTOBER 2010	1806814	110126	05/2011	280.00
12/01/2010	72238	GTC SYSTEMS INC	1910			175.00
503-1923-419.20-06	11/15/2010	IT CONSULTING	30923	110560	05/2011	175.00
12/01/2010	72239	HARBOR FREIGHT TOOLS	56			20.39
101-6040-454.30-22	11/02/2010	SLEDGE HAMRS-PIER DECK	01-583450	110040	05/2011	20.39
12/01/2010	72240	IMPERIAL BEACH CHAMBER OF	COMM 1505			185.00
101-1010-411.30-02	11/12/2010	SPONSORSHIP HOILDAY MIX E	5696	F11068	05/2011	185.00
12/01/2010	72241	JUNE ENGEL	2213			79.93
405-1260-413.28-11	11/24/2010	PRINTING COSTS LIBRARY	541767		05/2011	79.93
12/01/2010	72242	KIM A MIKHAEL	1680			270.00
101-3050-425.21-04	10/27/2010	09/30/10 DNGRUS DOG HRNG	10-27-2010	110632	04/2011	270.00
12/01/2010	72243	MOBILE HOME ACCEPTANCE CORPORA	1533			299.06
408-5020-432.25-01	11/23/2010	12/07/10-01/06/11	155653	110067	05/2011	299.06
12/01/2010	72244	MPC OUTLET	2157			94.61
503-1923-419.30-22	11/16/2010	LITEON 24X SATA DVDRW OEM	161629	110624	05/2011	94.61

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
12/01/2010	72245	NATIONAL SIGNAL INC	1806			250.00
101-3010-421.20-06	10/27/2010	REPAIR MACHINE	0012212-IN	110633	04/2011	250.00
12/01/2010	72246	OFFICE DEPOT, INC	1262			350.73
101-1110-412.30-01	11/04/2010	TONER CARTRIDGE	539907734001	110047	05/2011	74.34
101-1130-412.30-01	11/04/2010	CALCULATOR	539907761001	110047	05/2011	13.46
405-1260-413.28-11	09/16/2010	SELBY, J-BUSINESS CARDS	533069528001	110047	03/2011	37.16
101-1210-413.30-01	11/09/2010	FILE FOLDERS	540432904001	110047	05/2011	9.50
101-5020-432.30-01	11/17/2010	PENS/PLANNERS/CALENDAR	541380464001	110047	05/2011	66.62
101-5020-432.30-01	11/17/2010	LABELS/NOTEBOOK/FOLDERS	541437814001	110047	05/2011	59.00
101-5020-432.30-01	11/17/2010	PLANNER-DAILY	541449044001	110047	05/2011	48.15
408-5020-432.30-01	11/18/2010	REFILL PAPER/TABS	541559648001	110047	05/2011	42.50
12/01/2010	72247	PACIFIC UTILITY PRODUCTS	2283			1,947.90
101-5010-431.50-04	11/16/2010	ELECTRICAL PEDESTAL	23100	110539	05/2011	1,947.90
12/01/2010	72248	PADRE JANITORIAL SUPPLIES	1430			575.98
101-6040-454.30-02	11/05/2010	DISINFECTANT	309037	110043	05/2011	205.75
101-1910-419.30-02	11/17/2010	JANITORIAL SUPPLIES	309489	110043	05/2011	335.87
101-6040-454.30-02	11/22/2010	LOTION SOAP	309610	110043	05/2011	34.36
12/01/2010	72249	PARTNERSHIP WITH INDUSTRY	1302			2,226.78
101-6040-454.21-04	11/03/2010	P/E 10/31/2010	GS03190	110020	05/2011	1,101.29
101-6040-454.21-04	11/16/2010	P/E 11/15/2010	GS03229	110020	05/2011	1,125.49
12/01/2010	72250	PITNEY BOWES INC	271			76.71
101-1920-419.28-09	11/05/2010	POSTAGE TAPE	405447	F11063	05/2011	76.71
12/01/2010	72251	PMI	23			466.15
101-6040-454.30-02	11/03/2010	PROTECTIVE GLOVES	0259438	110030	05/2011	330.68
101-6040-454.30-02	11/18/2010	PROTECTIVE GLOVES	0262087	110030	05/2011	135.47
12/01/2010	72252	PRO LINE PAINT COMPANY	52			83.47
101-5010-431.30-02	11/18/2010	PAINT	5937-5	110037	05/2011	83.47
12/01/2010	72253	PRUDENTIAL OVERALL SUPPLY	72			438.86
101-5020-432.25-03	11/03/2010	11/03/10 PW UNIFORMS	30138346	110048	05/2011	109.95
101-5020-432.25-03	11/10/2010	11/10/10 PW UNIFORMS	30140066	110048	05/2011	101.37
101-5020-432.25-03	11/17/2010	11/17/10 PW UNIFORMS	30141528	110048	05/2011	109.95
101-5020-432.25-03	11/24/2010	11/24/10 PW UNIFORMS	30143111	110048	05/2011	117.59
12/01/2010	72254	RANCHO AUTO & TRUCK PARTS	1685			497.43
501-1921-419.28-16	11/03/2010	OIL FILTER/KWIK CONN BLAD	7693-51748	110034	05/2011	52.47
501-1921-419.28-16	11/04/2010	#602 MULTI SW HZDRD	7693-51869	110034	05/2011	175.56
501-1921-419.28-16	11/08/2010	#612 NEW WATER PUMP	7693-52347	110034	05/2011	28.80
501-1921-419.28-16	11/10/2010	A-6 SEMI NET PADS/INNER S	7693-52602	110034	05/2011	55.82
501-1921-419.28-16	11/10/2010	OIL FILTER/WSHR FLUID	7693-52616	110034	05/2011	53.29
501-1921-419.28-16	11/12/2010	#602 BLOWER MOTOR	7693-52874	110034	05/2011	73.83
501-1921-419.30-22	11/17/2010	AIR HOSE WHIPS	7693-53515	110034	05/2011	57.66

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	INVOICE	PO #	PER/YEAR	CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION					TRN AMOUNT
12/01/2010	72255	SAVMART PHARMACEUTICAL SERVICE	1687				53.46
101-3020-422.30-02	09/21/2010	MORPHINE		30027	110631	03/2011	16.96
101-3020-422.30-02	07/01/2010	HOSPIRA MIDAZOLAM		28094	110631	01/2011	36.50
12/01/2010	72256	SKS INC.	412				2,264.21
501-1921-419.28-15	11/18/2010	798.1 G REG FUEL		1236893-IN	110104	05/2011	2,264.21
12/01/2010	72257	STANFORD SIGN & AWNING	1532				3,995.00
408-1920-519.20-06	11/23/2010	FACADE IMPRVMT-13TH/IB B		10358	110638	05/2011	3,995.00
12/01/2010	72258	TERRA BELLA NURSERY, INC.	1946				510.02
101-6020-452.28-01	11/09/2010	CASSIA LEPTOPHYLLA		44819	110054	05/2011	510.02
12/01/2010	72259	WAXIE SANITARY SUPPLY	802				94.55
101-6040-454.30-02	11/18/2010	URINAL DEODORIZER		72307428	110031	05/2011	94.55
12/01/2010	72260	ZOLL MEDICAL CORPORATION	1976				78.30
101-3020-422.30-02	10/19/2010	AIRWAY ADAPTER		1733278	110630	04/2011	78.30
DATE RANGE TOTAL *							1,120,718.86 *



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: DECEMBER 15, 2010

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

SUBJECT: CONSENT CALENDAR: KAMAL NONA (OWNER)/NICK ALJABI (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 13TH STREET AND 1150, 1152 13TH 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 13th Street and 1150, 1152 13th Street in the C-3 (Neighborhood Commercial) Zone. This project was approved by the City Council on June 17, 2009 (Resolution No. 2009-6772). The City Council approved a six (6) month extension for this project on July 7, 2010 (Resolution 2010-6910).



PROJECT EVALUATION/DISCUSSION:

No new zoning requirements have been enacted that would negatively affect the time extension request. The applicant has submitted plans for a building permit plan check, which is currently under review. The applicant claims that the project had been delayed due to unforeseeable circumstances and difficulty in obtaining construction financing. Imperial Beach Municipal Code 19.82.100 – Conditional Use Permit Expiration and Extension – states that "If construction and use of the property in reliance on a conditional use permit approval has not commenced within the one-year period, such period may be extended by the planning commission or city council for a period not exceeding six months for each application, up to a maximum of two years from the date of original approval." Approval of this request would provide the second six month extension for the project, and would meet the maximum two year extension from the date of original approval.

**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. 2010-6982, 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 2010-6982

c: file MF 863

Kamal Nona, 1126 13th Street, Imperial Beach, CA 91932

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
28230 ORCHARD LAKE ROAD, SUITE 201
PADDINGTON HILLS, MICHIGAN 48334
TELEPHONE: (248) 624-0050

11-16-2010

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

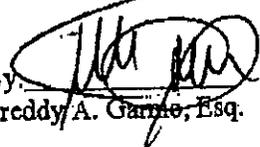
Re: **Project Number MF863**
Address: 1120-1122, 1150-1152 13th Street, Imperial Beach, CA

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 13th 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

K.N.

RESOLUTION NO. 2010-6982

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 13TH STREET AND 1150, 1152 13TH STREET, IN THE C-3 (NEIGHBORHOOD COMMERCIAL) ZONE. MF 863.

APPLICANT: KAMAL NONA (OWNER)

WHEREAS, on December 15, 2010, the City Council of the City of Imperial Beach held a public meeting to consider the merits of approving or denying an additional six month 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 13th Street and 1150, 1152 13th Street in the C-3 (Neighborhood Commercial) Zone; and

WHEREAS, on July 7, 2010, the City Council of the City of Imperial Beach approved a six month 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 13th Street and 1150, 1152 13th Street in the C-3 (Neighborhood Commercial) Zone; and

WHEREAS, on June 17, 2009, the City Council of the City of Imperial Beach approved 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 13th Street and 1150, 1152 13th Street (APN 633-022-20-00 and 633-022-16-00) in the C-3 (Neighborhood Commercial) Zone, legally described as follows:

1120, 1122 13th 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 13th 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 13th Street and 1150, 1152 13th 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 13th Street and 1144, 1146 13th 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 submitted a building permit plan check submittal; and

WHEREAS, the applicant claims that the project had been delayed due to unforeseeable circumstances and difficulty in obtaining construction financing; 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 13th 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 13th Street and 1150, 1152 13th 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 13th Street and 1150, 1152 13th Street, in the C-3 (Neighborhood Commercial) Zone, will be in harmony with the purpose and intent of the zoning code (BMC 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 13th Street and 1150, 1152 13th 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 13th 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 13th Street and 1150, 1152 13th 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 13th Street is a mixed-use development, and the property to the north of 1150, 1152 13th 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 13th Street and 1150, 1152 13th 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 13th Street and 1150, 1152 13th 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 13th Street), 633-022-19-00 (1126 13th Street), 633-022-17-00 (1144 13th Street), 633-022-18-00 (1146 13th Street), and 633-022-16-00 (1150, 1152 13th 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 June 17, 2011**. Conditions of approval must be satisfied, building permits issued, and substantial construction must have commenced prior to this date. 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 13th Street to be secured with CAL-AM approved enclosure.
21. Remove the two (2) existing driveway approaches on 13th 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 13th 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 15th day of December 2010, by the following roll call vote:

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

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. 2010-6982 – 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 13TH STREET AND 1150, 1152 13TH 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: DECEMBER 15, 2010

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

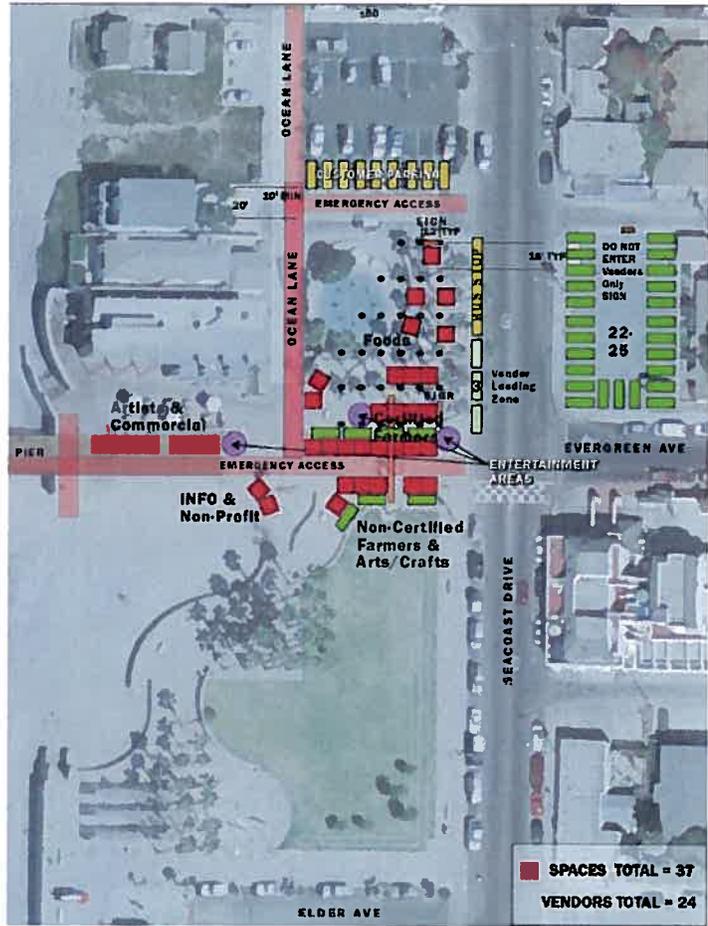
SUBJECT: PUBLIC HEARING: MODIFICATIONS TO CONDITIONS OF APPROVAL FOR REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), AND SITE PLAN REVIEW (SPR 100016) FOR A CERTIFIED FARMER'S MARKET ("IMPERIAL BEACH FARMER'S MARKET") LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036.

PROJECT BACKGROUND/DISCUSSION:

A Farmer's Market, located at Pier Plaza in the PF (Public Facilities) Zone (APN 625-340-20-00 & 625-330-23-00), was approved by City Council on April 7, 2010 (Resolution 2010-6876; MF 1036 – Regular Coastal Permit 100014/Conditional Use Permit 100015/Site Plan Review 100016). One of the conditions of approval for the project was to have City Council review the conditional use permit after six months of operation. As of November 2010, the market had been in operation under the original approval provided in Resolution 2010-6876 for approximately seven months. City staff provided an update to City Council on November 17, 2010. Modifications to the original conditions of approval were recommended by staff and the applicant, and City Council discussed the project and directed staff to provide a notice informing the public of the hearing that will take place on December 15, 2010, where Council will consider and take action on proposed modifications to the original conditions of approval for the Farmer's Market project.



The Farmer's Market at Pier Plaza is certified by the San Diego County Agricultural Commission and County of San Diego Department of Environmental Health. The Market was approved to take place every Friday from 1 PM – 7:30 PM in the summer (April – September) and 1 PM – 6 PM in the winter (October – March) (with two hours needed to set up and take down). The market was approved to consist of no more than thirty-seven (37) vendor spaces, unless more were subsequently approved by the Community Development Department. The vendors were approved to include the following: approximately nine (9) Farmer vendors; nine (9) pre-packaged/food vendors; six (6) arts/crafts vendors; two (2) non-profit vendors; 6 misc. commercial vendors. In order to be maintained as a legitimate "Farmer's Market," a condition imposed by the City was that no less than 22% of the vendors must be farmers (ex. no less than eight (8) farmer vendors must be present for a market with thirty-seven (37) total vendors), and no more than two (2) non-profit vendors shall be provided at each market event. As of October 22, 2010, there are twenty-three (23) vendors, seven (7) of which are farmers, totaling 30% of all vendors, and two (2) non-profit vendors, which is consistent with the approved vendor count. It has been staff's observation that the Market has adequately maintained the minimum farmer vendor and maximum non-profit vendor counts.



The duties of the market management include the opening and closing of the market, enforcement of all health and safety requirements, verification of vendor permits/certification, market cleanliness, supervision of any volunteers, traffic/parking, storm water best management practices training to staff/volunteers/vendors, supervision of security patrol, and provision of customer service. A security patrol was required to be provided at each market event to ensure that the surrounding neighborhood is not negatively impacted. The market also is required to maintain safe, reasonable, and emergency access to the beach/park/pier/shops/sidewalks, and be completely deconstructed and cleaned at the end of each market operation, in addition to paying for required City staff time spent for refuse clean up, trash disposal and restroom cleanliness and public safety inspections. It has been staff's observation that these duties are being performed.

At the November 17, 2010 City Council meeting, four primary issues were discussed: 1) hours of operation, 2) Public Safety inspection fees, 3) market cleanliness, and 4) long-term impact to Pier Plaza.

Hours of Operation: The Farmer's Market was approved to take place every Friday from 1 PM – 7:30 PM in the summer (April – September) and 1 PM – 6 PM in the winter (October – March) (with two hours needed to set up and take down). These hours were consistent with the Tidelands Maintenance work hours, thus not incurring overtime costs to maintain restrooms, pick up waste, and provide electricity. In September 2010, Market representatives requested a modification of the winter hours from 1 - 6 PM to 2 - 7 PM (with two hours needed to set up and take down). Market management stated that a majority of sales take place in the last few hours of operation and that staying open until 7 PM would assist in the success of the market and its vendors. To accommodate the Market, City staff has been made available for the extra hour of operation at the weekly cost of \$100, paid for by the Farmer's Market. The \$100 fee pays for the costs associated with the extra hour of operation (i.e. provide electrical service, service support, restroom operation, etc.). At the November 17, 2010 City Council meeting, staff recommended modifications to the original conditions of approval that would allow for the Market to operate from 2 – 7 PM subject to payment of the \$100 fee for the extra hour of operation. On December 7, 2010, Market representatives requested that the Market be allowed to operate until 7 PM throughout December 2010, and then maintain the previously approved hours of operation from 1 – 6 PM for the remainder of the winter. If the City Council supports periodic extended winter hours of operation, staff recommends modifying condition #1 of Resolution 2010-6876 (also condition #1 of Resolution 2010-6975) to allow for the Market to operate at the hours of 1 – 6 PM, with the provision that the Market may operate for an additional hour in the winter subject to City staff approval and written authorization, and payment of the \$100 fee for the extra hour of operation. Staff also recommends modifying condition #37 of Resolution 2010-6876 (now condition #38 of Resolution 2010-6975) to provide language discussing the \$100 fee for the extra hour of operation in the winter.

Public Safety Inspection Fees: Another original condition of approval was that the Market would be inspected on a weekly basis by an Imperial Beach Fire Inspector at a rate of \$90 per inspection to cover staff time and associated City expenses. Shortly after approval of the Market in April 2010, Market management requested monthly safety inspections as opposed to weekly. Public Safety staff agreed to monthly inspections because it was determined that the market generally operated within the required safety conditions of approval and operation standards. On November 4, 2010, Market management requested that safety inspections take place on a quarterly basis. At this time, Public Safety staff would not recommend quarterly inspections; however, staff would recommend revisiting the request for quarterly inspections after an additional six (6) months of market operation. Staff recommends revising the language in condition #41 of Resolution 2010-6876 (now condition #42 of Resolution 2010-6975), which discusses safety inspections, to state that the event shall be inspected on a monthly rather than weekly basis, and that the frequency and cost of the safety inspections are subject to the discretion of the Public Safety Director.

Market Cleanliness: A primary concern with locating the Farmer's Market on Pier Plaza is maintaining the cleanliness of the Plaza. The original condition of approval for the project was that the Market would be responsible for the cost of retaining one employee for refuse clean up, trash disposal and restroom cleanliness for a weekly cost of \$110 to cover staff time and associated expenses. The fees were subject to modification or suspension at the discretion of the Public Works Director. Approximately one month after the approval of the Farmer's Market, Market management requested that the fee be suspended. Public Works staff reviewed the Market's request, and determined that the fee could be suspended because Market personnel had been adequately cleaning up the project area after each event, thus not requiring extra City staff time for this purpose. By late summer, City staff noticed that trash and debris were not

adequately being cleaned up by the Market. In September 2010, City staff contacted Market management to inform them of the concerns with Pier Plaza cleanliness after the Farmer's Market events. Due to on-going concerns, the \$110 clean-up fee was re-instated in early October 2010 because it was increasingly necessary for City staff to spend time cleaning up the Plaza after Market events. Subsequently, City staff met with Market management to discuss cleanliness of the Plaza and it was agreed that a "cleaning and maintenance" account would be established with the City to which the Market would contribute funds to be used on an as-needed basis if additional cleaning was required by City staff. If it is necessary for City staff to clean-up after the event, staff time will be charged against the account and City staff would make every effort to contact Market management informing them what charges were made against the account, and why they were necessary. However, if the Market leaves the Plaza in adequate condition, no time would be charged to the account. This method is preferred over a weekly fee because it will directly charge for time spent cleaning instead of charging/not charging the clean-up fee and knowing if the extra staff time will be necessary on any given week. Staff recommends revising condition #26 of Resolution 2010-6876 (now condition #27 of Resolution 2010-6975) to replace the weekly clean-up fee language with language referring to the clean-up account that will be charged on an as-needed basis.

Long-Term Impact to Pier Plaza: After six (6) months of operation of the Farmer's Market, staff has observed that the area where the Market operates is showing wear. Much of this wear is related to the increased activity in Pier Plaza due to the weekly Market events and an increase in the amount of pressure washing required to clean up the area due to staining that occurs from spilled grease and food products. It is apparent that the checkerboard textured and tinted concrete surface is becoming permanently damaged. Also, the increased vehicular activity in the Plaza from loading and unloading of Market supplies increases the risk of damaging City property. Though no formal recommendation is provided by staff on the matter, it should be noted that these observations suggest that the Pier Plaza life cycle is being shortened.

Also, because the Farmer's Market had at one time proposed decorative lights that would locate on all vendor booths, staff recommends a new condition be provided that would require design review for aesthetic proposals/modifications. Typically, projects located on design review corridors, such as Seacoast Drive, require review by the Design Review Board. However, because the Market only takes place once a week, and to streamline the review process, City staff recommends that the Community Development Department review the aesthetic proposals/modifications to ensure compliance with the "Design Manual and Design Review Guidelines" adopted by the City Council on June 19, 1984 (condition #26 of Resolution 2010-6975).

At the November 17, 2010 City Council meeting, Council seemed in support of the modified hours of operation and associated fees, safety inspection fees, creation of the market cleaning and maintenance account, and staff review of design proposals. However, additional issues were brought up throughout the City Council meeting which required additional review/discussion and additional modifications to the original conditions of approval. These issues included Market City Council updates, Market closures and notification requirements, and replacement of lights on Pier Plaza.

Market City Council Updates: Staff recommended that condition #23 of Resolution 2010-6876, which required that the conditional use permit be reviewed by the City Council after six months of operation, be modified to state that City staff would monitor the operation of the Farmer's Market and provide periodic updates and/or concerns to the City Council as deemed necessary by the City Manager. At the November 17, 2010 City Council meeting, the Council

recommended that the market be brought back to the City Council before the spring daylight saving time change in 2011, which would require a review of the project prior to March 13, 2011. At that time, staff will provide an update on the project to the City Council, and the Council will be able to assess the operation of the market and consider additional conditions or to modify conditions deemed to be necessary or helpful to the market's operation. In addition, this update may include a review of any signage plans that the applicant proposes, and would include a review of any alternate market layouts.

Market Closures and Notification Requirements: Staff also recommended that condition #2 of Resolution 2010-6876 be revised. The original condition of approval stated that the market may be canceled at the discretion of the City of Imperial Beach in lieu of other scheduled events or activities, and that the City would make every effort to notify the market no less than two weeks prior to each scheduled event or activity. When the project was originally approved, staff did not anticipate holiday closures that would make City staff unavailable to maintain restrooms, pick up waste whenever necessary, and provide electricity. Staff had recommended to include language to the original condition of approval that would allow for the market to be closed if staff is not available to monitor and assist in the Market's operation, and that City staff would inform the Market as soon as it was known that staff would not be available. Both the applicant and the Council recommended that this condition of approval be modified so that City staff would provide a yearly calendar to the applicant so that the Market would be aware of any necessary closures as far in advance as possible. After reviewing the 2011 City holiday closures (attachment 6), it appears that the City will be closed on November 11, 25, and December 30, 2011, which would require that the Market not operate on those days. Also, the Sandcastle Competition event will take place on July 22-24, 2011, which would require that the Market not operate on July 22, 2011. Taking into consideration the applicant's request, and the Council's direction, staff recommends modifying the original condition of approval to state that the Market may be canceled if City staff is not available to monitor and assist in the Market's operation due to holiday closures, or in the case of an emergency, and/or in lieu of other scheduled events or activities, and that the City will notify the market of all events/activities whenever they are scheduled, and will inform the Market of all City closures whenever the yearly holiday schedule is prepared, which is typically available at the beginning of the calendar year (see condition #2 of Resolution 2010-6975).

Replacement of Lights at Pier Plaza: The applicant requested that the City replace lights that were not functioning on Pier Plaza. It should be noted that the lights on the Plaza have been an ongoing issue. The uprights that were installed in the Plaza were a metal product that deteriorated soon after installation, and could no longer function. In addition, the particular design of the light boxes were no longer available, so no replacement boxes could be found. The light boxes must meet exact dimensions in order to locate within the concrete, and staff has not been able to locate light boxes with the proper dimensions. Replacement of these lights were included as part of the design of Street Improvements RDS Phase 3 (Seacoast Drive Street Improvements) project, which would include the removal of concrete panels where the uprights are installed, and replacement of the colored textured concrete panel, and installation of the new upright design. However, this project has been delayed, so the lights have not been replaced. When it became clear that the Seacoast Drive Street Improvements project would continue to be delayed, staff began researching alternative designs that would resolve the lighting issues in Pier Plaza. Staff is still researching alternative measures at this time.

ENVIRONMENTAL STATUS:

This project complies with the requirements of the California Environmental Quality (CEQA) as this project is categorically exempt pursuant to the CEQA Guidelines Section 15304 (e) (minor alterations to land).

COASTAL JURISDICTION:

This project is located in the coastal zone as defined by the California Coastal Act of 1976. The City Council public hearing on April 7, 2010 served as the required coastal permit hearing which considered the findings under the California Coastal Act. The permit hearing determined that the proposed development satisfies the required findings for approval and issuance of a Coastal Development Permit. The project is located in the Appeal Jurisdiction of the California Coastal Commission, as indicated on the Local Coastal Program Post Certification and Appeal Jurisdiction Map, and, as such, was appealable to the California Coastal Commission under Section 30603(a) of the California Public Resources Code. The California Coastal Commission did not appeal the project approval.

FISCAL ANALYSIS:

Project Account Number 0100014 has been created for processing of this application.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Consider staff recommendations
3. Provide comment on operation of the project.
4. Adopt Resolution No. 2010-6975, approving modifications to the previous conditions of approval for Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016).

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown
City Manager

Attachments:

1. Resolution No. 2010-6975
2. Resolution No. 2010-6876
3. Farmer's Market Site Plan 031910
4. Farmer's Market Electrical Site Plan 022210
5. Market Rules and Regulations
6. 2011 City Holiday Schedule

c: file MF 1036

Deanna Rose, I.B. Beautiful, 600 Palm Avenue, Ste. 222, Imperial Beach, CA 91932

Richard Gannon, San Diego Unified Port District, P.O. Box 120488, 3165 Pacific Highway, San Diego, CA 92112-0488

California Coastal Commission, Diana Lilly, Coastal Program Analyst, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-1735

Hank Levien, Public Works Director
Tom Clark, Public Safety

[Return to Agenda](#)

RESOLUTION NO. 2010-6975

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING MODIFICATIONS TO CONDITIONS OF APPROVAL FOR REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), AND SITE PLAN REVIEW (SPR 100016) (REFERENCE RESOLUTION 2010-6876) WHICH PROVIDES A CERTIFIED FARMER'S MARKET ("IMPERIAL BEACH FARMER'S MARKET") LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036.

APPLICANT: DEANNA ROSE, FOR I.B. BEAUTIFUL

WHEREAS, on April 7, 2010 the City Council of Imperial Beach, by Resolution 2010-6876, approved Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) to provide a Certified Farmer's Market ("Imperial Beach Farmer's Market") at Pier Plaza in the PF (Public Facilities) Zone (APN 625-340-20-00 & 625-330-23-00), a site legally described as follows:

Parcel 1 (APN 625-340-20-00):

Lots 1 thru 13, Block 4, of Parcel Map No. 1071, in the City of Imperial Beach, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County; and

Parcel 2 (APN 625-330-23-00):

Lot 1, Block 5, of Parcel Map No. 1071, in the City of Imperial Beach, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County; and

WHEREAS, Resolution 2010-6876 provides, in Condition No. 23, that the conditional use permit would be reviewed by City Council after six (6) months of operation to assess the operation of the market at Pier Plaza and consider additional conditions or to modify conditions deemed to be necessary or helpful to the market's operation; and

WHEREAS, on December 15, 2010, the City Council of the City of Imperial Beach considered the original conditions of approval for the Farmer's Market and determined that modifications were necessary for the market's operation; and

WHEREAS, the City Council found that the project is consistent with the General Plan/Local Coastal Plan and is in substantial compliance with Goal 13d, 13e and Policy P-7 of the Parks, Recreation, and Access Element of the General Plan/Local Coastal Plan, which states that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors," "support the area's economy," and that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront"; and

WHEREAS, the City Council found that the project is consistent with the PF (Public Facilities) Zone of the Zoning Ordinance, which designates land for public facilities and public recreational amenities for residents and visitors; and

WHEREAS, this project complies with the requirements of the California Environmental Quality (CEQA) as this project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15304 (e) (minor alterations to land); and

WHEREAS, the City Council considered the information contained in the staff reports on this case and public testimony received on this case; and

WHEREAS, the City Council further offered the following findings in support of its decision to conditionally 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.**

The use is an outdoor certified Farmer's Market which will offer residents an environment in which they may purchase retail goods. The project is located in an area with regularly scheduled bus stops which encourage the use of public transportation. The event will generate foot traffic to support other businesses within the neighborhood, provide an outdoor alternative for local residents, and encourage a community common interest.

- 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 use is a weekly outdoor certified Farmer's Market which will offer residents an opportunity to purchase retail goods. The market 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 because the market will operate in accordance with the conditions imposed by the City, which include observance of best management practices and public safety.

- 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 project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase good, similar to those offered by other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved permit.

- 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 project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy." One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas." The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase goods and encourage community integration and activity, similar to other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved permit.

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 use is a weekly outdoor certified Farmer's Market which will offer residents an opportunity to purchase retail goods. The market 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 because the market will operate in accordance with the conditions imposed by the City, which include observance of best management practices and public safety.

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

The project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy". One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas." The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase goods, similar to those offered by other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved

permit.

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

The subject site is in an existing public plaza which provides retail goods for local demand. The proposed project is compatible with the established uses as no physical changes are proposed to the existing structures.

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.

The Farmer's Market is located on Pier Plaza near Evergreen Avenue and Seacoast Drive. The project is located in an area with regularly scheduled bus stops which encourage the use of public transportation. All access aisles and beach access will remain unobstructed. The neighborhood may enjoy the market without having to utilize motorized transportation. No nearby structures and uses will be negatively affected.

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

The subject site is in an existing public plaza which provides retail goods for local demand. The project is compatible with the established uses as no physical changes are proposed to the existing structures.

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

The Farmer's Market is located in the PF (Public Facilities) Zone on Pier Plaza near Evergreen Avenue and Seacoast Drive. The project is located in an area with regularly scheduled bus stops which encourage the use of public transportation. The applicant has coordinated with Metropolitan Transport System to ensure proper circulation. Though no standards are provided for the PF Zone, eight (8) parking spaces in the parking lot north of the project site will remain open for customer parking. Market vendors will park in a private lot on the northeast corner of Seacoast Drive and Evergreen Avenue. The neighborhood may enjoy the market without having to utilize motorized transportation. If the event, or event parking, becomes a detriment to the neighborhood or City, the market may be suspended and/or discontinued until further analysis and solution is provided and approved by the Community Development Department.

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

The project will comply with all relevant criteria set forth in Title 19, Zoning.

COASTAL PERMIT FINDINGS:

- 12. The proposed development conforms to the Certified Local Coastal Plan including Coastal Land Use Policies.**

The PF (Public Facilities) Zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy". One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas."

Shore Processes and Shore Protection

The project does not impact shore processes and protection.

Public Access

The market is a weekly temporary use that will take place once a week and should have no significant impact to public access.

Coastal/Scenic View

The market is a weekly temporary use that will take place once a week and should have no significant impact to coastal/scenic views.

- 13. For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.**

The market is a weekly temporary use that will take place once a week and no issue regarding public access to the beach is identified for this project.

- 14. For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for beach sand replenishment purposes. The mitigation fee shall be deposited in an interest bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of Imperial Beach in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of any protective structures.**

This finding does not apply since the project does not involve construction of a shoreline protection device.

15. **The proposed development meets the minimum criteria set forth in the City of Imperial Beach Zoning Ordinance, the City's Minimum Landscape Planting and Irrigation Standards, and the City's Design Guidelines, as applicable.**

The project will comply with all relevant criteria set forth in Title 19, Zoning.

16. **This project complies with the California Environmental Quality Act.**

The project consists of a temporary market that shall take place once a week. This project complies with the requirements of the California Environmental Quality Act (CEQA) as this project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15304 (e) (minor alterations to land). The City has prepared a Categorical Exemption per the California Environmental Quality Act (CEQA) requirements for this project and the Notice of Exemption will be filed with the County Clerk in compliance with CEQA.

17. **Public Notice requirements, pursuant to Zoning Ordinance Section 19.87.100, of the Coastal Development Project have been satisfied.**

The project description and the date of the City Council public hearing were sent to property owners within 300 feet and occupants within 100 feet of the subject site on March 25, 2010, and a public hearing notice was published in the Eagle and Times newspaper on March 25, 2010.

NOW, THEREFORE, BE IT RESOLVED that modifications to conditions of approval for Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) (Reference Resolution 2010-6876) which provides a certified Farmer's Market located at Pier Plaza in the PF (Public Facilities) Zone (APN 625-340-20-00 & 625-330-23-00) are hereby **approved** by the City Council of the City of Imperial Beach subject to the following:

CONDITIONS OF APPROVAL

PLANNING

1. The market's hours of operation shall only take place on the approved day, Friday, at the approved times (Summer [April - September]: 2 PM - 7:30 PM with setup at 12 PM - 2 PM and take down from 7:30 PM - 9:30 PM; Winter [October - March]: 1 PM - 6 PM with setup at 11 AM - 1 PM and take down from 6 PM - 8 PM). The Market may operate for an additional hour in the winter subject to staff approval and written authorization, and the conditions outlined in condition #38 of this Resolution. All conditions of approval must be met prior and during each event. The market is subject to all applicable licenses and permits, and all market dates are subject to approval of the City and can be suspended or revised at any time. Adjustments of hours of operation and/or market layout are subject to the discretion of the Community Development Department.

2. At the discretion of the City of Imperial Beach, the market may be canceled if City staff is not available to monitor and assist in the Market's operation due to holiday closures, or in the case of an emergency, and/or in lieu of other scheduled events or activities (i.e. e. g., Sandcastle) where the market may conflict with the operation of those events and the public's use of Pier Plaza. The City will make every effort to notify the market of all events/activities whenever they are scheduled, inform the Market of all City closures whenever the yearly holiday schedule is prepared (which is typically available at the beginning of the calendar year), and provide a list of all known dates that the market will not be allowed to operate due to the events and City closures, no less than two weeks prior to each scheduled event or activity.
3. Market layout shall be in substantial compliance with the Site Plan, dated March 19, 2010, Market Rules and Regulations dated February 4, 2010, and Electrical Site Plan dated February 22, 2010, on file in the office of the Community Development Department and with the conditions required herein.
4. Stalls, and other objects or materials, shall not be permitted to block safe and reasonable access to the beach, park, pier, shops at Pier Plaza, sidewalks, and emergency access aisles.
5. No motorized vehicles are permitted in the event area, except those designated for set up and tear down of vendor stalls, and those that are required to set up behind their respective booths/stalls. Safety, aesthetics, and pedestrian circulation must not be hindered in any way. The amount of vehicles permitted in the event area is subject to staff discretion, and may be revised at any time.
6. All vehicles, equipment, machinery, and other items must maintain a separation distance of no less than three (3) feet from the Surfhenge artwork/structure.
7. Insurance and Indemnification. To the fullest extent permitted by law, Applicant/permittee shall indemnify, including the cost to defend, and hold harmless the City of Imperial Beach and the San Diego Unified Port District, and its officers, officials, attorneys and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Applicant, its employees, agents, and subcontractors in the operation of the Farmers Market under the CUP. Applicant/permittee's duty to indemnify under this condition 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 the Port or its elected officials, officers, agents, and employees. Applicant/permittee's indemnification obligations shall not be limited by the insurance provisions of this condition. This condition to defend, hold harmless and indemnify shall not terminate upon expiration or termination of the CUP. Applicant/permittee, at Applicant/permittee's own cost and expense, shall procure and maintain, for the duration of the CUP, public liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. The insurance policy shall be with a

reputable insurer subject to approval by the City and shall be endorsed with the following specific language: "The City of Imperial Beach and the San Diego Unified Port District, their elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of the operation of the Farmers Market under the CUP issued on April 7, 2010 and as modified on December 15, 2010."

8. Market manager shall ensure that the market is in compliance with all state, county, and local laws and regulations.
9. The market shall be completely deconstructed and cleaned at the end of each market operation.
10. A security patrol shall be provided by the applicant/permittee at each market event to ensure that the surrounding neighborhood is not negatively impacted.
11. Eight (8) parking spaces shall be maintained for customer parking. Any modification to parking requirements shall be subject to the discretion of the Community Development Department.
12. If the event, or event parking, becomes a detriment to the neighborhood or City, the market may be suspended and/or discontinued until further analysis and solution is provided and approved by the Community Development Department.
13. Per San Diego Metropolitan Transit System: A minimum of 60 feet of continuous red curb, from the curb return south of the driveway on the alley south of Elm Avenue and north of Evergreen Avenue off of Seacoast Drive (northern-most red curb area), must be maintained for bus access. Busses must be able to stop entirely parallel to the curb so that both the front and back doors can be used safely, so that the bus does not block the alley, and so that the bus can back out safely if necessary. Loading/Unloading for the market event may only use the red curb area south of the Evergreen Avenue crosswalk, on the west side of Seacoast Drive, on event days and during the approved loading/unloading times (approximately 11 AM - 1 PM and 6 PM - 8 PM). Signage and staff must be provided to enforce all loading area restrictions. At no time shall any vehicles block the crosswalk or the access ramps.
14. All market vendors shall have all appropriate certificates, business licenses, and permits prior to participation in the market event.
15. No more than thirty-seven (37) market vendor spaces shall be allowed, unless more are approved by the Community Development Department (approximately 9 Farmer vendors; 9 pre-packaged/food vendors; 6 arts/crafts vendors; 2 non-profit vendors; 6 misc. commercial vendors). No less than 22% of the vendors shall be farmers (ex. no less than eight (8) farmer vendors must be present for a market with 37 total vendors), and no more than two (2) non-profit vendors shall be provided at each market event. Any increase to the overall amount of market vendors shall be reviewed by the Community Development Department for consideration. All vendors shall sell/provide services that are consistent with the General Plan and Municipal Code.

16. Any live entertainment shall be subject to application and approval of appropriate permits.
17. The applicant shall receive a continuance of temporary signage. The temporary signage is allowed for the hours of operation for each event, and must be removed at the close of each event. All signage is subject to the requirements of the Imperial Beach Municipal Code and must obtain appropriate permits and approvals from the Community Development and Public Works Departments.
18. Approval of this permit shall not waive compliance with any portion of the International Building Code, the California Building Code, and Municipal Code in effect at the time a permit is issued or inspection is performed.
19. Failure to comply with a condition, standard or law is grounds for suspension or revocation of the discretionary permits.
20. All negative balances in the project account (100014) shall be paid prior to any permit issuance, final inspection, and market operation.
21. Approval of the Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) for this project is valid for a one-year **vesting** period from the date of approval, to **expire** on **April 7, 2011**. Conditions of approval must be satisfied, permits issued, and use in reliance must have commenced prior to this date, unless a time extension is granted by the City prior to expiration.
22. 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.
23. Unless necessity warrants an early review, the conditional use permit shall be reviewed by City Council ~~after six (6) months of operation~~ prior to the spring daylight saving time change in 2011 (March 13, 2011). The purpose of this review will be to assess the operation of the market at this location and consider additional conditions or to modify conditions deemed to be necessary or helpful to the market's operation. In addition, this update may include a review of any signage proposals, or modifications to the layout of the market.
23. Failure to comply with any condition of this permit, or other standards or law, is grounds for revocation of the conditional use permit.
24. If adverse traffic and/or pedestrian conditions are observed as a result of and during the Farmers Market, traffic control measures shall be implemented. Such measures may include the use of trained traffic control personnel to allow for the safe and steady flow of both pedestrians and vehicles across and along Seacoast Drive.
25. Any aesthetic proposals and/or modifications to the Farmer's Market (ex. decorative lights) are subject to design review by the Community Development Department.

PUBLIC WORKS

- ~~26. Applicant shall be responsible for the cost for retaining one employee for refuse clean up, trash disposal and restroom cleanliness (\$20.00 per hour, 1:00 p.m. to 6:30 p.m. Total estimated cost is \$110.00). The \$110.00 is due weekly and shall be submitted to the Community Development Department prior to each event. These fees may be modified or suspended at the discretion of the Public Works Director.~~
27. Applicant shall maintain a minimum \$200.00 cleaning and maintenance account with the City (Acct. 10001B). If it is necessary for City staff to clean-up after the Farmer's Market, staff time will be charged against the account and City staff will make every effort to contact Market management informing them of what charges were made against the account, and why the charges were necessary. The account shall be replenished on an as-needed basis by the Market.
28. Applicant shall leave the Mel Portwood Plaza in a clean and orderly condition at the conclusion of each special event.
29. Marked parking regulations compliance is required (i.e., No parking in red zones and restricted time limit parking is to be honored except as shown on the Site Plan, dated March 19, 2010).
30. Applicant shall be responsible for posting and recovering the parking, no parking, and restricted use parking locations as shown on the Site Plan, dated March 19, 2010.
31. Applicant shall be responsible for the coordination with and notification of Metropolitan Transit Services for the closing and reopening of the southbound bus stop adjacent to Mel Portwood Plaza during the period of each event.
32. Any damage to buildings, structures, turf or landscape materials as the result of this event will encumber full cost recovery from applicant.
33. Booths, decorations, advertisements or other ornamentation shall not be suspended from, or attached to, any trees, trelliswork, artwork, benches, seat walls or other facilities on the Plaza.
34. Applicant shall not anchor any canopy or structure or fixture into the turf or hardscape. No fasteners or other devices can be pushed into the turf due to underground electrical and irrigation service lines therein. If canopies, structures or other fixtures are used and anchored in place it must be done with surface – ground level – weights.
35. No motorized vehicles are to be parked or driven on Mel Portwood Plaza, except to and from the designated area for set up and tear down (remain off the turf area!), and those that are required to set up behind their respective booths/stalls. All vehicles, or other equipment, that may discharge fluids, materials, and/or grease, shall provide drip pans to collect any discharges. There shall be no evidence of vehicular use, and property must not be disturbed in any manner.

Adequate curb ramps shall be provided by the applicant so that the curb and gutter is not affected by vehicular use, subject to approval by the City. Disabled access to and from the pier and plaza must not be restricted.

36. City will maintain the installed plaza restrooms clean and stocked for use by special event participants as well as for other plaza users during normal Plaza hours.
37. Mel Portwood Plaza is a public park and thus exclusive use of the Plaza is not granted as part of this application.
38. As requested by the applicant, electrical service at selected locations circled on the Electrical Site Plan, dated February 22, 2010, within the Plaza will be provided at no additional cost providing these services terminate before standard employee end of work day (6:30 PM winter schedule & 8:30 PM summer schedule). Those locations are noted in the Electrical Site Plan, dated February 22, 2010, herein - to include three (3) in pavement 20-amp circuits and two (2) electrical pedestals (northern and middle). No water or other services will be provided by the City. Outside of listed Tidelands hours of operations, Market shall pay a \$100 fee for every one man hour of operation.

PUBLIC SAFETY

39. No vendor booths, or other equipment or items, shall be placed along any Fire Department access lane.
40. All tents canopies and temporary membrane structures shall be provided with a minimum (1) 2A:10B:C fire extinguisher with annual California State Fire Marshal certification tag affixed.
41. Generators and fuel powered equipment shall provide a 4A: 60B:C rated fire extinguisher with annual California State Fire Marshal certification tag affixed.
42. This event shall be inspected on a ~~weekly~~ monthly basis by an Imperial Beach Fire Department, Fire Inspector. The fees associated with this inspection shall be \$90.00 monthly as set by the Public Safety Director. The fees shall be paid by the permit applicant to the Community Development Department prior to each event. Modification to the frequency and cost of the safety inspections are subject to the discretion of the Public Safety Director.

BUILDING

43. All pedestrian walkways must maintain a 4' minimum width (merchandise, signs, etc.). Electrical cords, ramps etc. on the walk ways must not impede the use by disabled patrons and meet minimum disabled access requirements.
44. Food vendors must obtain all required permits from other agencies (i.e., environmental health).
45. All propane tanks used for cooking appliances shall have a valid 5 year

certification.

- 46. All cooking appliances shall be protected (fenced enclosed etc.) from accidental contact from the general public.

APPEAL PROCESS UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

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 17th day of November 2010, by the following vote:

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

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 correct copy of Resolution No. 2010-6975 – A Resolution of the City Council of the City of Imperial Beach, California, APPROVING MODIFICATIONS TO CONDITIONS OF APPROVAL FOR REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), SITE PLAN REVIEW (SPR 100016) (REFERENCE RESOLUTION 2010-6876) WHICH PROVIDES A CERTIFIED FARMER’S MARKET (“IMPERIAL BEACH FARMER’S MARKET”) LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036.

CITY CLERK

DATE

RESOLUTION NO. 2010-6876

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), SITE PLAN REVIEW (SPR 100016) TO PROVIDE A CERTIFIED FARMER'S MARKET ("IMPERIAL BEACH FARMER'S MARKET") LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036.

APPLICANT: DEANNA ROSE, FOR I.B. BEAUTIFUL

WHEREAS, on April 7, 2010, 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 Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) to provide a certified Farmer's Market ("Imperial Beach Farmer's Market") located at Pier Plaza in the PF (Public Facilities) Zone (APN 625-340-20-00 & 625-330-23-00), a site legally described as follows:

Parcel 1 (APN 625-340-20-00):

Lots 1 thru 13, Block 4, of Parcel Map No. 1071, in the City of Imperial Beach, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County; and

Parcel 2 (APN 625-330-23-00):

Lot 1, Block 5, of Parcel Map No. 1071, in the City of Imperial Beach, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County; and

WHEREAS, the City Council finds that the project is consistent with the General Plan/Local Coastal Plan and is in substantial compliance with Goal 13d, 13e and Policy P-7 of the Parks, Recreation, and Access Element of the General Plan/Local Coastal Plan, which states that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors," "support the area's economy," and that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront"; and

WHEREAS, the City Council finds that the project is consistent with the PF (Public Facilities) Zone of the Zoning Ordinance, which designates land for public facilities and public recreational amenities for residents and visitors; and

WHEREAS, this project complies with the requirements of the California Environmental Quality (CEQA) as this project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15304 (e) (minor alterations to land); and

WHEREAS, the City Council considered the information contained in the staff reports on this case and public testimony received on this case; and

WHEREAS, the City Council further offers the following findings in support of its decision to conditionally 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.**

The use is an outdoor certified Farmer's Market which will offer residents an environment in which they may purchase retail goods. The project is located in an area with regularly scheduled bus stops which encourage the use of public transportation. The event will generate foot traffic to support other businesses within the neighborhood, provide an outdoor alternative for local residents, and encourage a community common interest.

- 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 use is a weekly outdoor certified Farmer's Market which will offer residents an opportunity to purchase retail goods. The market 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 because the market will operate in accordance with the conditions imposed by the City, which include observance of best management practices and public safety.

- 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 project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase good, similar to those offered by other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved permit.

- 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 project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy." One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase

the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas." The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase goods and encourage community integration and activity, similar to other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved permit.

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 use is a weekly outdoor certified Farmer's Market which will offer residents an opportunity to purchase retail goods. The market 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 because the market will operate in accordance with the conditions imposed by the City, which include observance of best management practices and public safety.

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

The project site is subject to PF (Public Facilities) zoning regulations. The PF zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy". One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas." The use is a weekly certified Farmer's Market which will offer residents an outdoor environment to purchase goods, similar to those offered by other uses in the PF Zone. The market will be required to comply with all regulations and conditions included as part of the approved permit.

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

The subject site is in an existing public plaza which provides retail goods for local demand. The proposed project is compatible with the established uses as no physical changes are proposed to the existing structures.

- 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.**

The Farmer's Market is located on Pier Plaza near Evergreen Avenue and Seacoast Drive. The project is located in an area with regularly scheduled bus

stops which encourage the use of public transportation. All access aisles and beach access will remain unobstructed. The neighborhood may enjoy the market without having to utilize motorized transportation. No nearby structures and uses will be negatively affected.

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

The subject site is in an existing public plaza which provides retail goods for local demand. The project is compatible with the established uses as no physical changes are proposed to the existing structures.

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

The Farmer's Market is located in the PF (Public Facilities) Zone on Pier Plaza near Evergreen Avenue and Seacoast Drive. The project is located in an area with regularly scheduled bus stops which encourage the use of public transportation. The applicant has coordinated with Metropolitan Transport System to ensure proper circulation. Though no standards are provided for the PF Zone, eight (8) parking spaces in the parking lot north of the project site will remain open for customer parking. Market vendors will park in a private lot on the northeast corner of Seacoast Drive and Evergreen Avenue. The neighborhood may enjoy the market without having to utilize motorized transportation. If the event, or event parking, becomes a detriment to the neighborhood or City, the market may be suspended and/or discontinued until further analysis and solution is provided and approved by the Community Development Department.

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

The project will comply with all relevant criteria set forth in Title 19, Zoning.

COASTAL PERMIT FINDINGS:

12. The proposed development conforms to the Certified Local Coastal Plan including Coastal Land Use Policies.

The PF (Public Facilities) Zone allows for a variety of uses including public facilities and public recreational amenities for residents and visitors. Two goals in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" state that parks and recreation areas should provide "a balanced healthy environment and quality of life for residents and visitors" and "support the area's economy". One policy in the General Plan & Coastal Plan's "Parks, Recreation, and Access Element" states that "the City and its business community should take direct action to increase the amount of tourist-oriented business both along the beachfront, South San Diego Bayfront and inland areas."

Shore Processes and Shore Protection

The project does not impact shore processes and protection.

Public Access

The market is a weekly temporary use that will take place once a week and should have no significant impact to public access.

Coastal/Scenic View

The market is a weekly temporary use that will take place once a week and should have no significant impact to coastal/scenic views.

- 13. For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.**

The market is a weekly temporary use that will take place once a week and no issue regarding public access to the beach is identified for this project.

- 14. For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for beach sand replenishment purposes. The mitigation fee shall be deposited in an interest bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of Imperial Beach in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of any protective structures.**

This finding does not apply since the project does not involve construction of a shoreline protection device.

- 15. The proposed development meets the minimum criteria set forth in the City of Imperial Beach Zoning Ordinance, the City's Minimum Landscape Planting and Irrigation Standards, and the City's Design Guidelines, as applicable.**

The project will comply with all relevant criteria set forth in Title 19, Zoning.

- 16. This project complies with the California Environmental Quality Act.**

The project consists of a temporary market that shall take place once a week. this project complies with the requirements of the California Environmental Quality (CEQA) as this project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15304 (e) (minor alterations to land). The City has prepared a Categorical Exemption per the California Environmental Quality Act (CEQA) requirements for this project and the Notice of Exemption will be filed with the County Clerk in compliance with CEQA.

- 17. Public Notice requirements, pursuant to Zoning Ordinance Section 19.87.100, of the Coastal Development Project have been satisfied.**

The project description and the date of the City Council public hearing were sent to property owners within 300 feet and occupants within 100 feet of the subject site on March 25, 2010, and a public hearing notice was published in the Eagle and Times newspaper on March 25, 2010.

NOW, THEREFORE, BE IT RESOLVED that Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) to provide a certified Farmer's Market located at Pier Plaza in the PF (Public Facilities) Zone (APN 625-340-20-00 & 625-330-23-00) is hereby **approved** by the City Council of the City of Imperial Beach subject to the following:

CONDITIONS OF APPROVAL

PLANNING

1. The market's hours of operation shall only take place on the approved day, Friday, at the approved times (Summer [April - September]: 2 PM - 7:30 PM with setup at 12 PM - 2 PM and take down from 7:30 PM - 9:30 PM; Winter [October - March]: 1 PM - 6 PM with setup at 11 AM - 1 PM and take down from 6 PM - 8 PM). All conditions of approval must be met prior and during each event. The market is subject to all applicable licenses and permits, and all market dates are subject to approval of the City and can be suspended or revised at any time. Adjustments of hours of operation and/or market layout are subject to the discretion of the Community Development Department.
2. At the discretion of the City of Imperial Beach, the market may be canceled in lieu of other scheduled events or activities (i.e., Sandcastle) that may conflict with the operation of those events and the public's use of Pier Plaza. The City will make every effort to notify the market no less than two weeks prior to each scheduled event or activity.
3. Market layout shall be in substantial compliance with the Site Plan, dated March 19, 2010, Market Rules and Regulations dated February 4, 2010, and Electrical Site Plan dated February 22, 2010, on file in the office of the Community Development Department and with the conditions required herein.
4. Stalls, and other objects or materials, shall not be permitted to block safe and reasonable access to the beach, park, pier, shops at Pier Plaza, sidewalks, and emergency access aisles.
5. No motorized vehicles are permitted in the event area, except those designated for set up and tear down of vendor stalls, and those that are required to set up behind their respective booths/stalls. Safety, aesthetics, and pedestrian circulation must not be hindered in any way. The amount of vehicles permitted in the event area is subject to staff discretion, and may be revised at any time.
6. All vehicles, equipment, machinery, and other items must maintain a separation distance of no less than three (3) feet from the Surfhenge artwork/structure.
7. Insurance and Indemnification. To the fullest extent permitted by law, Applicant/permittee shall indemnify, including the cost to defend, and hold harmless the City of Imperial Beach and the San Diego Unified Port District, and its officers, officials, attorneys and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Applicant, its employees, agents, and

subcontractors in the operation of the Farmers Market under the CUP. Applicant/permittee's duty to indemnify under this condition 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 the Port or its elected officials, officers, agents, and employees. Applicant/permittee's indemnification obligations shall not be limited by the insurance provisions of this condition. This condition to defend, hold harmless and indemnify shall not terminate upon expiration or termination of the CUP. Applicant/permittee, at Applicant/permittee's own cost and expense, shall procure and maintain, for the duration of the CUP, public liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. The insurance policy shall be with a reputable insurer subject to approval by the City and shall be endorsed with the following specific language: "The City of Imperial Beach and the San Diego Unified Port District, their elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of the operation of the Farmers Market under the CUP issued on April 7, 2010."

8. Market manager shall ensure that the market is in compliance with all state, county, and local laws and regulations.
9. The market shall be completely deconstructed and cleaned at the end of each market operation.
10. A security patrol shall be provided by the applicant/permittee at each market event to ensure that the surrounding neighborhood is not negatively impacted.
11. Eight (8) parking spaces shall be maintained for customer parking. Any modification to parking requirements shall be subject to the discretion of the Community Development Department.
12. If the event, or event parking, becomes a detriment to the neighborhood or City, the market may be suspended and/or discontinued until further analysis and solution is provided and approved by the Community Development Department.
13. Per San Diego Metropolitan Transit System: A minimum of 60 feet of continuous red curb, from the curb return south of the driveway on the alley south of Elm Avenue and north of Evergreen Avenue off of Seacoast Drive (northern-most red curb area), must be maintained for bus access. Busses must be able to stop entirely parallel to the curb so that both the front and back doors can be used safely, so that the bus does not block the alley, and so that the bus can back out safely if necessary. Loading/Unloading for the market event may only use the red curb area south of the Evergreen Avenue crosswalk, on the west side of Seacoast Drive, on event days and during the approved loading/unloading times (approximately 11 AM - 1 PM and 6 PM - 8 PM). Signage and staff must be provided to enforce all loading area restrictions. At no time shall any vehicles block the crosswalk or the access ramps.
14. All market vendors shall have all appropriate certificates, business licenses, and permits prior to participation in the market event.

15. No more than thirty-seven (37) market vendor spaces shall be allowed, unless more are approved by the Community Development Department (approximately 9 Farmer vendors; 9 pre-packaged/food vendors; 6 arts/crafts vendors; 2 non-profit vendors; 6 misc. commercial vendors). No less than 22% of the vendors shall be farmers (ex. no less than eight (8) farmer vendors must be present for a market with 37 total vendors), and no more than two (2) non-profit vendors shall be provided at each market event. Any increase to the overall amount of market vendors shall be reviewed by the Community Development Department for consideration. All vendors shall sell/provide services that are consistent with the General Plan and Municipal Code.
16. Any live entertainment shall be subject to application and approval of appropriate permits.
17. The applicant shall receive a continuance of temporary signage. The temporary signage is allowed for the hours of operation for each event, and must be removed at the close of each event. All signage is subject to the requirements of the Imperial Beach Municipal Code and must obtain appropriate permits and approvals from the Community Development and Public Works Departments.
18. Approval of this permit shall not waive compliance with any portion of the International Building Code, the California Building Code, and Municipal Code in effect at the time a permit is issued or inspection is performed.
19. Failure to comply with a condition, standard or law is grounds for suspension or revocation of the discretionary permits.
20. All negative balances in the project account (100014) shall be paid prior to any permit issuance, final inspection, and market operation.
21. Approval of the Regular Coastal Permit (CP 100014), Conditional Use Permit (CUP 100015), and Site Plan Review (SPR 100016) for this project is valid for a one-year **vesting** period from the date of approval, to **expire on April 7, 2011**. Conditions of approval must be satisfied, permits issued, and use in reliance must have commenced prior to this date, unless a time extension is granted by the City prior to expiration.
22. 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.
23. Unless necessity warrants an early review, the conditional use permit shall be reviewed by City Council after six (6) months of operation. The purpose of this review will be to assess the operation of the market at this location and consider additional conditions or to modify conditions deemed to be necessary or helpful to the market's operation.
24. Failure to comply with any condition of this permit, or other standards or law, is grounds for revocation of the conditional use permit.
25. If adverse traffic and/or pedestrian conditions are observed as a result of and during the Farmers Market, traffic control measures shall be implemented. Such

measures may include the use of trained traffic control personnel to allow for the safe and steady flow of both pedestrians and vehicles across and along Seacoast Drive.

PUBLIC WORKS

26. Applicant shall be responsible for the cost for retaining one employee for refuse clean up, trash disposal and restroom cleanliness (\$20.00 per hour, 1:00 p.m. to 6:30 p.m. Total estimated cost is \$110.00). The \$110.00 is due weekly and shall be submitted to the Community Development Department prior to each event. These fees may be modified or suspended at the discretion of the Public Works Director.
27. Applicant shall leave the Mel Portwood Plaza in a clean and orderly condition at the conclusion of each special event.
28. Marked parking regulations compliance is required (i.e., No parking in red zones and restricted time limit parking is to be honored except as shown on the Site Plan, dated March 19, 2010).
29. Applicant shall be responsible for posting and recovering the parking, no parking, and restricted use parking locations as shown on the Site Plan, dated March 19, 2010.
30. Applicant shall be responsible for the coordination with and notification of Metropolitan Transit Services for the closing and reopening of the southbound bus stop adjacent to Mel Portwood Plaza during the period of each event.
31. Any damage to buildings, structures, turf or landscape materials as the result of this event will encumber full cost recovery from applicant.
32. Booths, decorations, advertisements or other ornamentation shall not be suspended from, or attached to, any trees, trelliswork, artwork, benches, seat walls or other facilities on the Plaza.
33. Applicant shall not anchor any canopy or structure or fixture into the turf or hardscape. No fasteners or other devices can be pushed into the turf due to underground electrical and irrigation service lines therein. If canopies, structures or other fixtures are used and anchored in place it must be done with surface – ground level – weights.
34. No motorized vehicles are to be parked or driven on Mel Portwood Plaza, except to and from the designated area for set up and tear down (remain off the turf area!), and those that are required to set up behind their respective booths/stalls. All vehicles, or other equipment, that may discharge fluids, materials, and/or grease, shall provide drip pans to collect any discharges. There shall be no evidence of vehicular use, and property must not be disturbed in any manner. Adequate curb ramps shall be provided by the applicant so that the curb and gutter is not affected by vehicular use, subject to approval by the City. Disabled access to and from the pier and plaza must not be restricted.

35. City will maintain the installed plaza restrooms clean and stocked for use by special event participants as well as for other plaza users during normal Plaza hours.
36. Mel Portwood Plaza is a public park and thus exclusive use of the Plaza is not granted as part of this application.
37. As requested by the applicant, electrical service at selected locations circled on the Electrical Site Plan, dated February 22, 2010, within the Plaza will be provided at no additional cost providing these services terminate before standard employee end of work day (6:30 p.m. winter schedule & 8:30 p.m. summer schedule). Those locations are noted in the Electrical Site Plan, dated February 22, 2010, herein - to include three (3) in pavement 20-amp circuits and two (2) electrical pedestals (northern and middle). No water or other services will be provided by the City.

PUBLIC SAFETY

38. No vendor booths, or other equipment or items, shall be placed along any Fire Department access lane.
39. All tents canopies and temporary membrane structures shall be provided with a minimum (1) 2A:10B:C fire extinguisher with annual California State Fire Marshal certification tag affixed.
40. Generators and fuel powered equipment shall provide a 4A: 60B:C rated fire extinguisher with annual California State Fire Marshal certification tag affixed.
41. This event shall be inspected on a weekly basis by an Imperial Beach Fire Department, Fire Inspector. The fees associated with this inspection shall be \$90.00 weekly as set by the director of Public Safety. The fees shall be paid by the permit applicant to the Community Development Department prior to each event.

BUILDING

42. All pedestrian walkways must maintain a 4' minimum width (merchandise, signs, etc.). Electrical cords, ramps etc. on the walk ways must not impede the use by disabled patrons and meet minimum disabled access requirements.
43. Food vendors must obtain all required permits from other agencies (i.e., environmental health).
44. All propane tanks used for cooking appliances shall have a valid 5 year certification.
45. All cooking appliances shall be protected (fenced enclosed etc.) from accidental contact from the general public.

APPEAL PROCESS UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is

governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

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 7th day of April 2010, by the following vote:

AYES:	COUNCILMEMBERS:	BRAGG, MCCOY, ROSE, KING
NOES:	COUNCILMEMBERS:	JANNEY
ABSENT:	COUNCILMEMBERS:	NONE

James C. Janney

JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald

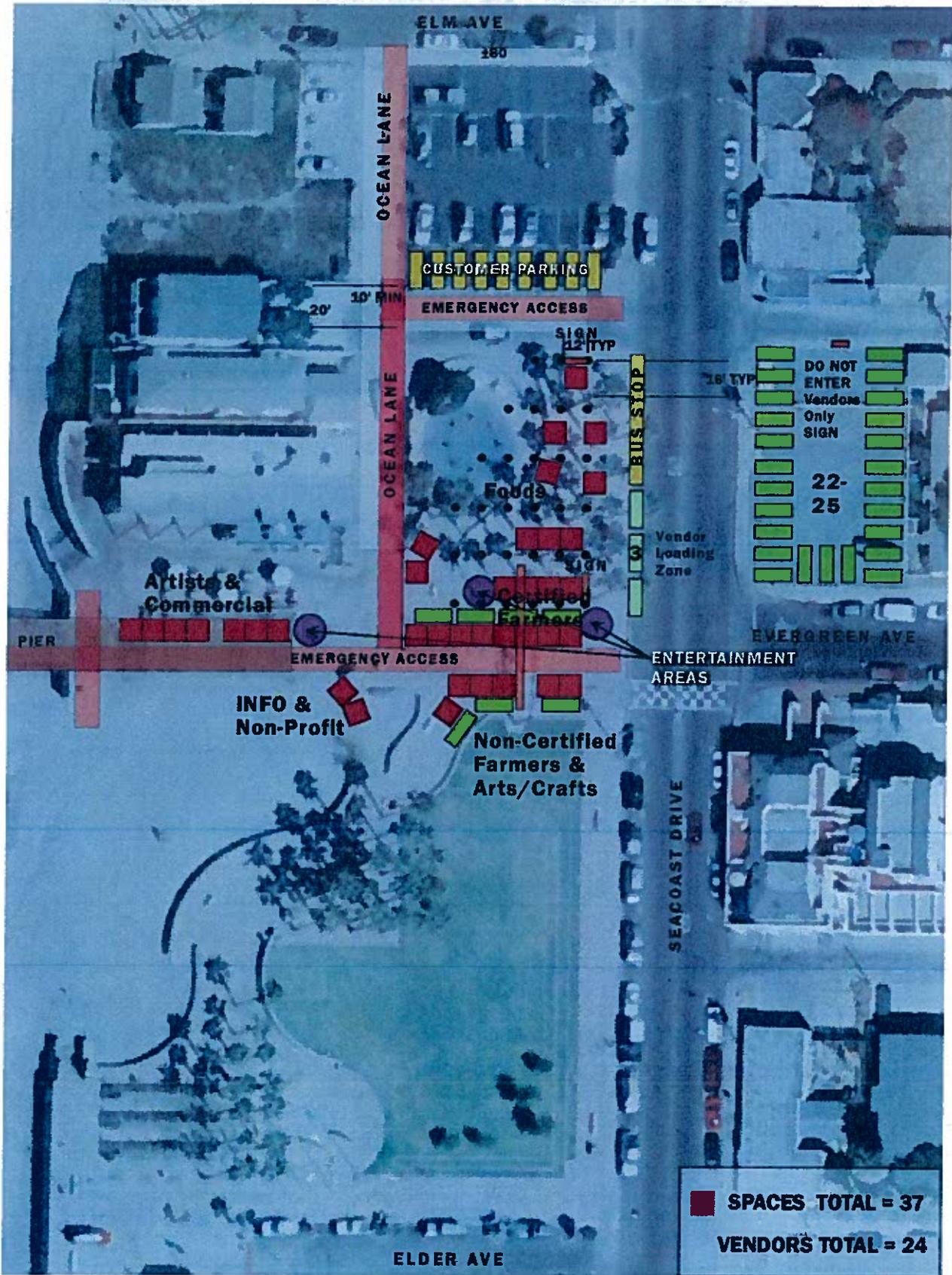
**JACQUELINE M. HALD, CMC
CITY CLERK**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2010-6876 – A Resolution of the City Council of the City of Imperial Beach, California, APPROVING A REGULAR COASTAL PERMIT (CP 100014), CONDITIONAL USE PERMIT (CUP 100015), SITE PLAN REVIEW (SPR 100016) TO PROVIDE A CERTIFIED FARMER'S MARKET ("IMPERIAL BEACH FARMER'S MARKET") LOCATED AT PIER PLAZA IN THE PF (PUBLIC FACILITIES) ZONE. MF 1036.

Jacqueline M. Hald
CITY CLERK

5/10/10
DATE

Site Plan, 3-19-10



**IMPERIAL BEACH FARMERS MARKET
PIER PLAZA LOCATION
10 Evergreen Ave, IB, CA 91932**

SCALE: 1" = 60'

- Vendor Space 10x10
- Vendor & Volunteer Parking (29-32 Shown, 7 Onsite & 22-25 Offsite)
- Vendor Loading (3 Shown)
- Customer Parking (9 Shown)

F. Imperial Beach Pier Plaza

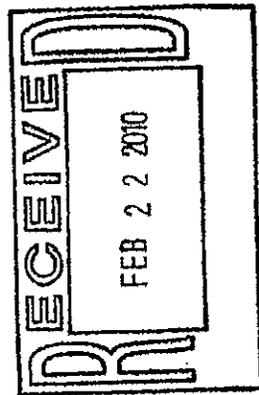
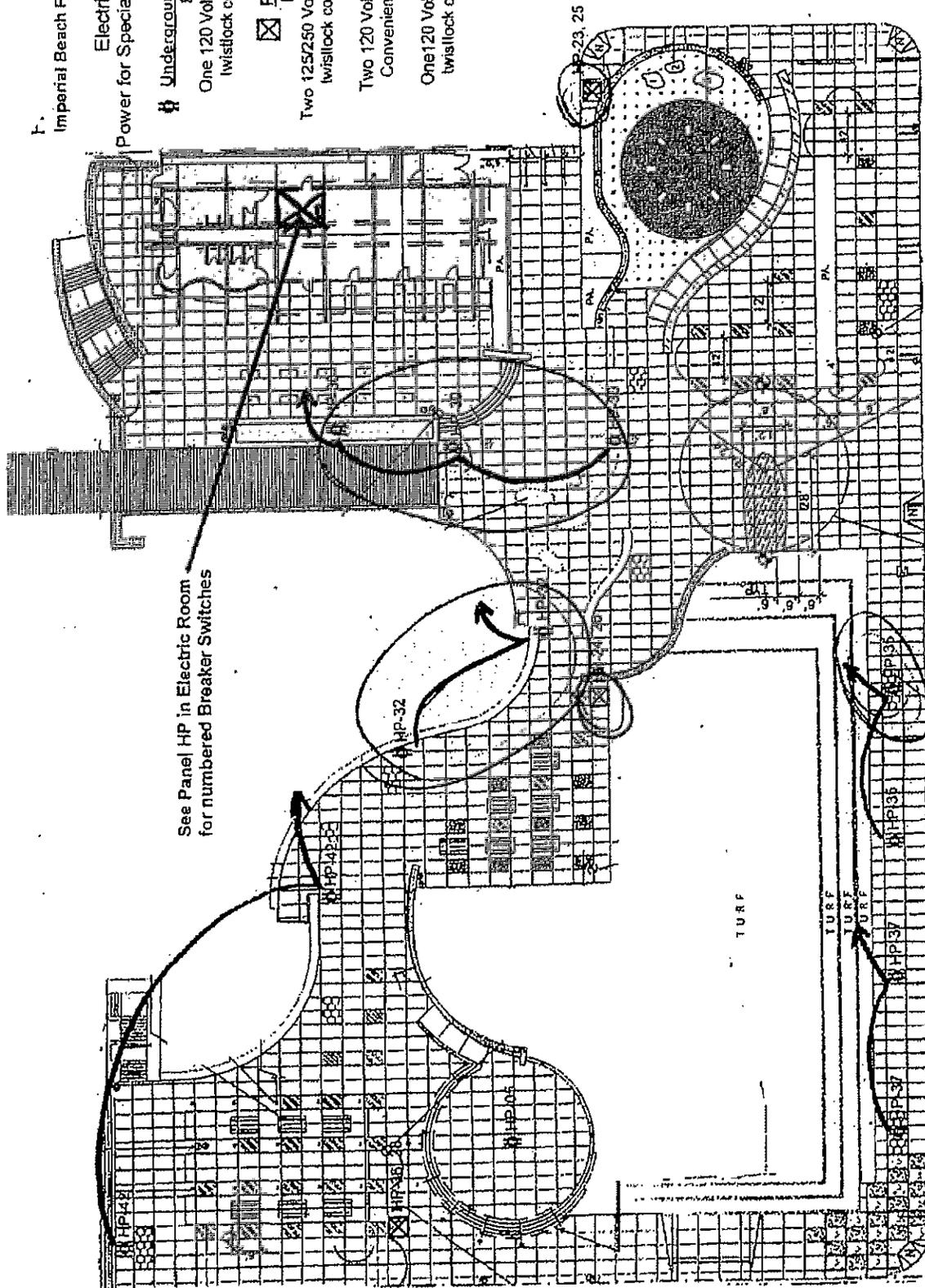
Electrical Plan
Power for Special Events

⊞ Underground boxes
Each has:
One 120 Volt, 20 Amp
twistlock connection

⊞ Pedestals
Each has:
Two 125/250 Volt 50 Amp
twistlock connections
and

Two 120 Volt, 30 Amp
Convenience outlets
and
One 120 Volt, 30 Amp
twistlock connection

See Panel HP in Electric Room
for numbered Breaker Switches



Imperial Beach Certified Farmers' Market

Pier Plaza, 10 Evergreen Ave., Seacoast Blvd. Imperial Beach, CA 91932

Market Rules and Regulations

Published February 4, 2010

Market Times

Summer Hours: April through September 1 p.m. – 7:30 p.m.
(vendors set-up after 11 a.m.)

Winter Hours: October through March 1 p.m. – 6:00 p.m.
(vendors set-up after 11 a.m.)

I.B. Beautiful, Inc. and the management of the Imperial Beach Farmers' Market shall implement and enforce all of the following rules and regulations in a fair and equitable manner

Admission of any producer to the Imperial Beach Certified Farmers' Market must follow the requirements and rules herein:

1. Fees: Payment along with any paperwork required must be turned in to Market managers 30 minutes prior to the close of Market.

2. Permits and Sales:

Farmers/Vendors shall have all appropriate certificates, business licenses, proof of liability and permits

Sellers must conspicuously post all required permits, licenses, and certificates per State regulations, prior to commencing sales.

The Market Manager will ensure that each Vendor has the required permits and licenses prior to participation in the Market:

- Business Tax Certificate (if applicable)
- I. B. Business License
- Temporary Food Facility Permit (if necessary)
- **Fire Extinguisher**
- Proof of Insurance
- Health Certificate (if necessary)
- Agricultural Permit

- A certified producer shall not represent, nor be represented by more than two other certified producers in a 12 month period.
- Each certified producer's certified agricultural products to be sold or offered for sale shall be separated and identifiable by each certified producer's valid certificate at the point of sale.
- The name of the certified producer for whom another certified producer is selling shall appear on the certificate of the certified producer that is conducting sales.
- The name of the certified producer who is selling the products of another certified producer shall appear on the certificate of the person or entity for whom the certified producer is selling.
- The certified producer selling for another certified producer shall be selling or offering for sale, at the same certified farmers' market on the same day, certified agricultural products which the certified producer conducting the sales has produced and which are in greater volume than the volume offered for sale for the other certified producer. The volume shall be measured by the weight or dollar value of the products at the time and point of sale. This volume requirement shall apply only at the beginning of each day of sale.
- The producer applying for certification shall obtain and submit to the agricultural commissioner, prior to certification, written authority from said or other certified producers on their behalf.
- A certified producer who sells certified agricultural products on behalf of another certified producer or whose products are sold by another certified producer shall keep for a period of not less than three years, the following records relating to such products:
 - Date of transfer to seller and accurate amount of products, by weight, dry measure, or count, transferred. Each separate product and amount shall be recorded according to variety.
 - Date of sale and accurate amount of products, by weight, dry measure, or count, sold. Each separate product and amount shall be recorded according to variety.
 - Names of both certified producers involved.

A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the department or county agricultural commissioner.

3. Scales:

Scales used in the Market must have currently valid inspection seals from the County agent in charge of weights and measures. Additionally, vendors must have a copy of the current Device Registration placed next to the scale.

4. Attendance:

- Vendors must be set-up and ready to sell 30 minutes before market opens. Vehicles may not travel through Market area during open hours.

- Only persons listed as employees or authorized sellers for a vendor may assist any vendor (see #2 Permits and Sales)
- Vendors and all equipment must vacate area within two hours of the close of the Farmers' Market
- Producers/sellers are asked to notify the Market Manager if they will not be attending the next week's Market.
- Producers/sellers or their representative must notify the Market Manager before 9 p.m. the day prior to Market day if they are unable to participate on that given day. Failure to comply will cause vendor probation.
- Vendors that arrive after market opens will not be allowed to set up.
- Vendors may not break down booth before end of market day unless prior arrangements are made with market manager.

5. Products/Merchandise:

Farmers/Vendors may not sell any item not listed on their certified producer certificate, load sheet or application without prior approval of the Market Manager. All products must be clearly marked as to price.

- Any person selling organic products or representing products as organic shall conspicuously post at the point of sale a photocopy of the represented certified producers' current State of California organic registration and, if applicable, documentation of the represented certified producers' organic certification. Prior to posting organic documents, it is permissible to conceal from public view acreage and dollar amounts pertaining to annual sales. A complete photocopy of the original, unaltered, current organic document(s) shall, upon the request of an enforcement officer, be made available for review at any time during participation in the market.
- A certified producer shall not sell or represent sprouts as his or her own production resulting from practicing the agricultural arts if less than 50 percent of the seeds, legumes or nuts in any package or container have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering.

6. Booths:

All booth locations are assigned by Market Management.

Required for all booths: 2A:10B:C fire extinguisher with annual California State Fire Marshal certification tag affixed

7. Trash/Waste:

All vendors are required to notify Market Management if any spills occur. Vendors must have trash receptacles and be responsible for removing any debris or trash that is generated by them. Cans, bottles, paper and cardboard, or any other recyclable material, shall be properly recycled. No water, or any liquid or material, will be disposed of down the storm drain, parking lot or sidewalk. All food vendors will at all times have a protective covering placed on the ground directly under their

canopy/work area. If a substance comes in contact with the pavement, it will be cleaned by vendor.

All vendors shall receive a copy of Farmers' Market Best Management Practices and a copy of the City of Imperial Beach Best Management Practices for businesses brochure.

8. Public Safety

All vendors to be in compliance with the California Fire Code (CFC) 2007 edition and City of Imperial Beach Municipal Code. Fire hydrants shall not be blocked or obstructed at any time.

9. Tents/Canopies:

All tents/canopies must be tied down securely. No exceptions. Tie downs will be inspected each Friday. Non-compliance will result in termination from the market.

Tents having an area in excess of 200 square feet and or canopies placed together in excess of 400 square feet or multiple tents and or canopies placed together equaling or greater than the above stated area, are to be used, they shall be flame-retardant treated with an approved State Fire Marshal seal attached. A permit from the Fire Department must be obtained. **All tents, canopies and temporary membrane structures shall be provided with a minimum (1) 2A:10B:C: FIRE EXTINGUISHER WITH ANNUAL CALIFORNIA STATE FIRE MARSHAL CERTIFICATION TAG AFFIXED.**

10. Electricity:

Extension cords, power cables must be of an approved type, and appropriately rated and sized for the intended use, amperage and length. Cords, cables are required to be rated for outdoor use. Electrical cords and cables are not allowed on walkways unless an approved protective ramp or other device shall protect any electrical cords or cables that are exposed to pedestrian or vehicle traffic. All electrical appliances/devices must be plugged directly into an approved power tap which is a polarized or grounded type, equipped with (circuit breaker reset), and shall be listed in accordance with UL 1363. Providing an approved power tap appliance is the responsibility of every vendor using electricity.

11. Food Vendors:

Cooking or Heating Appliances: All cooking and heating appliances are to be of an approved type and in good working conditions. All cooking and heating devices must be vented to the outside by approved means. Where vents or flues are used, all portions of the canopy or tent shall be no less than 12 inches from the flue or vent. Cooking and heating appliance shall not be placed in close proximity to tent or canopy walls, netting, cover, etc. **All food booths will have protective ground covering. No exceptions.**

All food samples must be kept covered.

Required: a2A:10B:C fire extinguisher with annual California State Fire Marshal certification tag affixed

Propane: All vendors utilizing propane shall maintain all tanks in a secure and upright position at all times. The use of approved tank stands is recommended. Bulk storage of propane tanks must be in preapproved location with approved signage and security.

Cooking Booths: Where cooking appliances are present, canopies shall be flame retardant treated with an approved State Fire Marshal seal attached. Individual canopies or groups of canopies totaling 400 square feet shall be separated by a minimum of 20 feet from other canopies. The use of charcoal and lighter fluid is prohibited and shall not be used for any reason. Smoking or open flame devices, such as candles, tiki torches, etc. shall not be permitted within or adjacent to canopies or tents.

12. Fuel Powered Equipment:

Generators and Fuel powered equipment shall have a 4A:60B:C rated fire extinguisher with annual California State Fire Marshal Certification tag affixed mounted near the equipment, within the operator's control.

13. Vendor Trucks on Plaza:

All vendors utilizing trucks on plaza **MUST** have protective drip pans beneath their truck. **NO EXCEPTIONS!**

14. Personal Code of Conduct:

- No smoking
- No drinking
- No illegal drug use
- Appropriate clothing (it can get very cool, windy and foggy by the beach).
 - Sales persons **MUST** wear **CLEAN** attire.
 - Sales persons must practice personal hygiene
- Gossip, rumor spreading and general negativity among participants will not be tolerated.



**City of Imperial Beach
Holiday Schedule
2010-2011**

2010 Holiday Schedule

Thursday, November 11	Veterans Day	City Hall Offices Closed
Thursday, November 25	Thanksgiving Day	City Hall Offices Closed
Friday, November 26	Day After Thanksgiving	City Hall Offices Closed
Friday, December 24	Christmas Eve	City Hall Offices Closed
Saturday, December 25	Christmas Day	Vacation Credit
December 27-30	Furlough	City Hall Offices Closed for the Holidays
Friday, December 31	New Year's Eve	<i>Friday Closed – Holiday Bank</i>

2011 Holiday Schedule

Saturday, January 1	New Year's Day	Vacation Credit
Monday, January 17	Martin Luther King, Jr. Day	City Hall Offices Closed
Monday, February 21	President's Day	City Hall Offices Closed
Thursday, March 31	Cesar Chavez Day	City Hall Offices Closed
Monday, May 30	Memorial Day	City Hall Offices Closed
Monday, July 4	Independence Day	City Hall Offices Closed
Monday, September 5	Labor Day	City Hall Offices Closed
Friday, November 11	Veterans Day	City Hall Offices Closed
Thursday, November 24	Thanksgiving Day	City Hall Offices Closed
Friday, November 25	Day After Thanksgiving	City Hall Offices Closed
Saturday, December 24	Christmas Eve	Vacation Credit
Sunday, December 25	Christmas Day	Observed on Monday, December 26
December 27-29	Furlough	City Hall Offices Closed for the Holidays
Saturday, December 31	New Year's Eve	Vacation Credit
Sunday, January 1	New Year's Day	Observed on Monday, January 2



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: DECEMBER 15, 2010

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

SUBJECT: CODE ENFORCEMENT – WEED & RUBBISH ABATEMENT
PUBLIC HEARING TO HEAR AND CONSIDER ALL
OBJECTIONS TO THE PROPOSED REMOVAL OF WEEDS,
RUBBISH, REFUSE, AND DIRT FROM 715 HOLLY AVE AND
822 GEORGIA STREET

BACKGROUND:

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.

Government Code section 39560 et. seq. and Chapter 8.40 of the Imperial Beach Municipal Code describe the following process for weed and rubbish abatement:

Step 1:
*Completed.
Resolution No.
2010-6971
adopted on
December 1, 2010*

1. Staff shall present to City Council those properties which constitute a public nuisance requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement.
2. 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.
3. City Council shall conduct a public hearing to hear and consider all objections. City Council may direct staff to proceed with and perform the necessary abatement.
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.

On December 1, 2010, the City Council adopted Resolution No. 2010-6971 declaring that weeds growing on and in front of the properties listed below constituted a public nuisance and directed staff to proceed with abatement of the violations.

Properties:

1. 715 Holly Ave
2. 822 Georgia Street

Pursuant to California Government Code section 39560, a noticed public hearing is now required to hear and consider any objections to the City Council's declaration of the above properties as public nuisances requiring weed and rubbish abatement.

DISCUSSION:

On December 2, 2010, staff mailed to the two listed property owners a Notice to Destroy Weeds and Remove Rubbish, Refuse, and Dirt, and a copy of the Notice was also posted on each of the two properties in compliance with chapter 8.40 of the Imperial Beach Municipal Code.

On December 6, 2010, copies of the Notice and Resolution No. 2010-6971 were mailed to the property owners. Staff completed a Declaration of Service certified by the City Clerk of the City of Imperial Beach for each of the properties.

FISCAL IMPACT:

All costs approved in this paragraph will be subject to review by the City Council, at a hearing pursuant to Chapter 8.40 of the Imperial Beach Municipal Code and Government Code section 39560 et. seq. after abatement efforts have been completed and before any lien may be imposed on the subject properties.

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 the Mayor and City Council:

1. Declare the public hearing open, and receive the report.
2. Entertain any objections or protests.
3. Close the Public Hearing.
4. Consider a motion to:
 - a. Adopt Resolution No. 2010-6978 to allow for the abatement of 715 Holly Avenue, and authorizing staff to proceed with and perform the necessary abatement of the nuisance and authorizes the staff to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from the 715 Holly Avenue.

- b. Adopt Resolution No. 2010-6979 to allow for the abatement of 822 Georgia Street, and authorizing staff to proceed with and perform the necessary abatement of the nuisance and authorizes the staff to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from the 822 Georgia Street.
5. Staff will return in a future council meeting with an abatement cost report. Staff shall keep an account of the cost of abatement on each separate parcel of land where the abatement work is conducted, and shall submit to the City Council all costs of abatement for their consideration at next available council meeting.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

- City Council Resolution #2010-6971
- City Council –DRAFT- Resolution #2010-6978, 715 Holly Ave
- City Council –DRAFT- Resolution #2010-6979, 822 Georgia St
- Table "A"
- Notice to Destroy Weeds and Remove Rubbish, dated December 2, 2010
 - 715 Holly Ave
 - 822 Georgia St
- Declaration of Service, dated December 6, 2010
 - 715 Holly Ave
 - 822 Georgia St

RESOLUTION NO. 2010-6971

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 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 DECEMBER 15, 2010 FOR THE PROPERTIES LOCATED AT 715 HOLLY AVENUE AND 822 GEORGIA STREET

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. To address weed and rubbish 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 (Section 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. The California Government Code section 39560 et. seq. and Chapter 8.40 of the Imperial Beach Municipal Code describe the following process for weed and rubbish abatement; and

WHEREAS,

1. Staff shall present to City Council those properties which constitute a public nuisance requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement.
2. 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.
3. City Council shall conduct a public hearing to hear and consider all objections. City Council may direct staff to proceed with and perform the necessary abatement.
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; and

WHEREAS, the following properties have been inspected by staff and identified to be in violation of California Government Code section 39560 et. seq. and Chapter 8.40 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 the respective property owners and the violations on the properties have not been abated.

PROPERTIES:

1. **715 Holly Ave (APN. 632-233-03)**; Owner: Lombardi-Munizza, Carmela (details see table "A")
 - a. July 13, 2010: Citizen Complaint received identifying above violations.
 - b. July 15, 2010: Notice of Violation issued to property owner to abate violations.
 - c. July 26, 2010: Staff inspected and observed the violations were unchanged.
 - d. August 2, 2010: Staff inspected and observed the violations were unchanged. Sheriff's conducted a welfare check of the home in search of the elderly owner.
 - e. August 4, 2010: Staff issued an Administrative Citation to property owner to abate violations.
 - f. September 7, 2010: Staff inspected and observed the violations were unchanged.
 - g. October 6, 2010: Staff inspected and observed the violations were unchanged.
 - h. November 4, 2010: Staff inspected and observed the violations were unchanged.

2. **822 Georgia St (APN. 627-111-19)**; Owner: Moreno, Juan M III (details see Table "A")
 - a. December 25, 2006: The property had a structure fire. Since February 2007, the property has had ongoing code violations, and has been assessed \$41,680.00 in civil fines, civil penalties, and penalties and interest charges of which only \$8,355.00 has been paid.
 - b. November 10, 2010: Staff inspected and observed the above violations.
 - c. November 17, 2010: Notice of Violation issued to property owner to abate violations by December 1, 2010; and

WHEREAS, staff is requesting that the City Council declare that weeds growing upon and in front of the above listed properties constitute 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 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 December 15, 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.

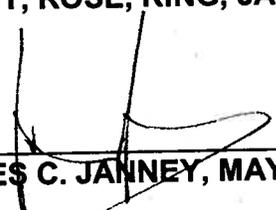
Section 3. The City Manager may cause a copy or copies of this Resolution to be conspicuously posted, as the City Manager may deem necessary.

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 properties 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.

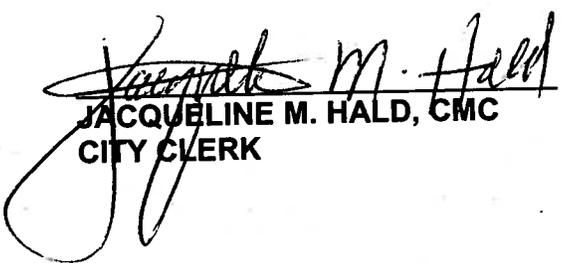
PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 1st day of December 2010, by the following vote:

AYES:	COUNCILMEMBERS:	BRAGG, MCCOY, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	NONE



JAMES C. JANNEY, MAYOR

ATTEST:


JACQUELINE M. HALD, CMC
CITY CLERK

RESOLUTION NO. 2010-6978

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AFTER HEARING AND CONSIDERING ALL OBJECTIONS, OVERRULES ALL OBJECTIONS AND HEREBY AUTHORIZES THE CITY MANAGER TO PROCEED AND PERFORM THE NECESSARY ABATEMENT OF THE NUISANCE AND AUTHORIZES THE CITY MANAGER TO SIGN ANY AGREEMENTS OR TAKE ANY OTHER STEPS NECESSARY TO REMOVE THE WEEDS, RUBBISH, REFUSE, AND DIRT FROM 715 HOLLY AVENUE

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, Government Code section 39560 et. seq. and Chapter 8.40 of the Imperial Beach Municipal Code describe the following process for weed and rubbish abatement:

1. Staff shall present to City Council those properties which constitute a public nuisance requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement.
2. 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.
3. City Council shall conduct a public hearing to hear and consider all objections. City Council may direct staff to proceed with and perform the necessary abatement.
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; and

WHEREAS, On December 1, 2010, the City Council adopted Resolution No. 2010-6971 declaring that weeds growing on and in front of the properties listed below constituted a public nuisance and directed staff to proceed with abatement of the violations.; and

WHEREAS, *Properties:*

1. 715 Holly Ave
2. 822 Georgia Street; and

WHEREAS, Pursuant to California Government Code section 39560, a noticed public hearing is now required to hear and consider any objections to the City Council's declaration of the above properties as public nuisances requiring weed and rubbish abatement.; and

WHEREAS, On December 2, 2010, staff mailed to the two listed property owners a Notice to Destroy Weeds and Remove Rubbish, Refuse, and Dirt, and a copy of the Notice was also posted on each of the two properties in compliance with chapter 8.40 of the Imperial Beach Municipal Code; and

WHEREAS, On December 6, 2010, copies of the Notice and Resolution No. 2010-6971 were mailed to the property owners. Staff completed a Declaration of Service certified by the City Clerk of the City of Imperial Beach for each of the 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, after hearing and considering all objections, overrules all objections and hereby authorizes the City Manager to proceed and perform the necessary abatement of the nuisance and authorizes the City Manager to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from 715 Holly Avenue.

Section 2. The cost of abatement is approved as follows:
All costs approved in this paragraph will be subject to review by the City Council at a hearing pursuant to Chapter 8.40 of the Imperial Beach Municipal Code and Government Code section 39560 et. seq. after abatement efforts have been completed, before any lien may be imposed on the subject property. 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. 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.

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 15th day of December 2010, by the following 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. 2010-6978 – A Resolution of the City Council of the City of Imperial Beach, California, AFTER HEARING AND CONSIDERING ALL OBJECTIONS, OVERRULES ALL OBJECTIONS AND HEREBY AUTHORIZES THE CITY MANAGER TO PROCEED AND PERFORM THE NECESSARY ABATEMENT OF THE NUISANCE AND AUTHORIZES THE CITY MANAGER TO SIGN ANY AGREEMENTS OR TAKE ANY OTHER STEPS NECESSARY TO REMOVE THE WEEDS, RUBBISH, REFUSE, AND DIRT FROM 715 HOLLY AVENUE.

CITY CLERK

DATE

RESOLUTION NO. 2010-6979

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AFTER HEARING AND CONSIDERING ALL OBJECTIONS, OVERRULES ALL OBJECTIONS AND HEREBY AUTHORIZES THE CITY MANAGER TO PROCEED AND PERFORM THE NECESSARY ABATEMENT OF THE NUISANCE AND AUTHORIZES THE CITY MANAGER TO SIGN ANY AGREEMENTS OR TAKE ANY OTHER STEPS NECESSARY TO REMOVE THE WEEDS, RUBBISH, REFUSE, AND DIRT FROM 822 GEORGIA STREET

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, Government Code section 39560 et. seq. and Chapter 8.40 of the Imperial Beach Municipal Code describe the following process for weed and rubbish abatement:

1. Staff shall present to City Council those properties which constitute a public nuisance requiring weed and rubbish abatement. City Council may declare by resolution those properties that are a public nuisance requiring abatement.
2. 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.
3. City Council shall conduct a public hearing to hear and consider all objections. City Council may direct staff to proceed with and perform the necessary abatement.
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; and

WHEREAS, On December 1, 2010, the City Council adopted Resolution No. 2010-6971 declaring that weeds growing on and in front of the properties listed below constituted a public nuisance and directed staff to proceed with abatement of the violations.; and

WHEREAS,

Properties:

1. 715 Holly Ave
2. 822 Georgia Street; and

WHEREAS, Pursuant to California Government Code section 39560, a noticed public hearing is now required to hear and consider any objections to the City Council's declaration of the above properties as public nuisances requiring weed and rubbish abatement.; and

WHEREAS, On December 2, 2010, staff mailed to the two listed property owners a Notice to Destroy Weeds and Remove Rubbish, Refuse, and Dirt, and a copy of the Notice was also posted on each of the two properties in compliance with chapter 8.40 of the Imperial Beach Municipal Code; and

WHEREAS, On December 6, 2010, copies of the Notice and Resolution No. 2010-6971 were mailed to the property owners. Staff completed a Declaration of Service certified by the City Clerk of the City of Imperial Beach for each of the 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, after hearing and considering all objections, overrules all objections and hereby authorizes the City Manager to proceed and perform the necessary abatement of the nuisance and authorizes the City Manager to sign any agreements or take any other steps necessary to remove the weeds, rubbish, refuse, and dirt from 822 Georgia Street.

Section 2. The cost of abatement is approved as follows:
All costs approved in this paragraph will be subject to review by the City Council at a hearing pursuant to Chapter 8.40 of the Imperial Beach Municipal Code and Government Code section 39560 et. seq. after abatement efforts have been completed, before any lien may be imposed on the subject property. 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. 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.

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 15th day of December 2010, by the following 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. 2010-6979 – A Resolution of the City Council of the City of Imperial Beach, California, AFTER HEARING AND CONSIDERING ALL OBJECTIONS, OVERRULES ALL OBJECTIONS AND HEREBY AUTHORIZES THE CITY MANAGER TO PROCEED AND PERFORM THE NECESSARY ABATEMENT OF THE NUISANCE AND AUTHORIZES THE CITY MANAGER TO SIGN ANY AGREEMENTS OR TAKE ANY OTHER STEPS NECESSARY TO REMOVE THE WEEDS, RUBBISH, REFUSE, AND DIRT FROM 822 GEORGIA STREET.

CITY CLERK

DATE

Table "A"

APN	SITE ADDRESS	PROPERTY OWNER	MAILING ADDRESS	CITY	STATE	ZIP
632-233-03-00	715 Holly Ave	LOMBARDI-MUNIZZA, CARMELA	4229 CHAMOUNE AVE,#220	SAN DIEGO	CA	92115
627-111-19-00	822 Georgia St	MORENO, JUAN M. III	6056 CAMINO DEL RINCON	SAN DIEGO	CA	92120

**COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE DIVISION**

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932



December 2, 2010

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE, AND DIRT**

Carmela Lombardi-Munizza
715 Holly Ave
Imperial Beach, CA 91932

Notice is hereby given that on the 7th day of July, 2010 the City Council of the City of Imperial Beach passed a resolution number **2010-6971** declaring that noxious or dangerous weeds were growing upon or in front of the property on this street, and that rubbish, refuse, and dirt were upon or in front of property on this street, at **715 Holly Ave, Assessor's Parcel No. 632-233-03-00**, in the City of Imperial Beach, County of San Diego, State of California, and more particularly described in the resolution, and that they constitute a public nuisance which must be abated by the removal of the weeds, rubbish, refuse, and dirt. Otherwise they will be removed and the nuisance abated by the city and the cost of removal assessed upon the land from or in front of which the weeds, rubbish, refuse, and dirt are removed and will constitute a lien upon such land until paid. Reference is hereby made to resolution number **2010-6971** for further particulars. A copy of said resolution is on file in the Office of the City Clerk of the City of Imperial Beach.

ALL PROPERTY OWNERS HAVING ANY OBJECTIONS TO THE PROPOSED REMOVAL OF THE WEEDS, RUBBISH, REFUSE, AND DIRT ARE HEREBY NOTIFIED TO ATTEND A MEETING OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH TO BE HELD AT 6:00 PM, ON DECEMBER 15, 2010, AT THE IMPERIAL BEACH CITY COUNCIL CHAMBERS, LOCATED AT 825 IMPERIAL BEACH BLVD, IN IMPERIAL BEACH, CA 91932, WHEN THEIR OBJECTIONS WILL BE HEARD AND GIVEN DUE CONSIDERATION.

Dated this 2nd day of December, 2010.

**Gary Brown, City Manager
City of Imperial Beach**

**COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE DIVISION**

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932



December 2, 2010

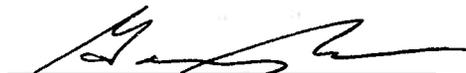
**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE, AND DIRT**

Juan M. Moreno III
6056 Camino Del Rincon
San Diego, CA 92120-3111

Notice is hereby given that on the 1st day of December, 2010 the City Council of the City of Imperial Beach passed a resolution number **2010-6971** declaring that noxious or dangerous weeds were growing upon or in front of the property on this street, and that rubbish, refuse, and dirt were upon or in front of property on this street, at **822 Georgia Street, Assessor's Parcel No. 627-111-19-00**, in the City of Imperial Beach, County of San Diego, State of California, and more particularly described in the resolution, and that they constitute a public nuisance which must be abated by the removal of the weeds, rubbish, refuse, and dirt. Otherwise they will be removed and the nuisance abated by the city and the cost of removal assessed upon the land from or in front of which the weeds, rubbish, refuse, and dirt are removed and will constitute a lien upon such land until paid. Reference is hereby made to resolution number **2010-6971** for further particulars. A copy of said resolution is on file in the Office of the City Clerk of the City of Imperial Beach.

ALL PROPERTY OWNERS HAVING ANY OBJECTIONS TO THE PROPOSED REMOVAL OF THE WEEDS, RUBBISH, REFUSE, AND DIRT ARE HEREBY NOTIFIED TO ATTEND A MEETING OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH TO BE HELD AT 6:00 PM, ON DECEMBER 15, 2010, AT THE IMPERIAL BEACH CITY COUNCIL CHAMBERS, LOCATED AT 825 IMPERIAL BEACH BLVD, IN IMPERIAL BEACH, CA 91932, WHEN THEIR OBJECTIONS WILL BE HEARD AND GIVEN DUE CONSIDERATION.

Dated this 2nd day of December, 2010.



Gary Brown, City Manager
City of Imperial Beach

The City of
Imperial
Beach

(619) 628-1359
FAX: (619) 424-4093



**COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE DIVISION**

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932

DECLARATION OF SERVICE

December 6, 2010

I, **DAVID GARCIAS**, hereby certify on penalty of perjury, that on December 2, 2010, at approximately 10:00 am, Pacific Daylight Time, I served a Notice to Destroy Weeds and Remove Rubbish, Refuse, and Dirt to Carmela Lombardi-Munizza, the Property Owner for the Property located at 715 Holly Ave (APN. # 632-233-03), **Imperial Beach, CA, 91932** in the following manner:

- Personally Served Signed: _____ Refused: _____
- Mailed Regular Mail
- Mailed Certified Mail, Return Receipt
- Posted at Property

Other: Fence line Secured with Padlock

In accordance with Chapters 8.50, 1.12, 1.16, and 1.22 of the Imperial Beach Municipal Code.

**DAVID GARCIAS
CODE COMPLIANCE OFFICER
CITY OF IMPERIAL BEACH**

**State of California
County of San Diego ss:**

On December 6, 2010 **DAVID GARCIAS**, personally appeared before me, **Jacqueline Hald**, City Clerk, known to me to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal:

Signature Jacqueline M. Hald (Seal)
JACQUELINE M. HALD, CITY CLERK



**COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE DIVISION**

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932

DECLARATION OF SERVICE

December 6, 2010

I, **DAVID GARCIAS**, hereby certify on penalty of perjury, that on December 2, 2010, at approximately 10:00 am, Pacific Daylight Time, I served a Notice to Destroy Weeds and Remove Rubbish, Refuse, and Dirt to Juan M. Moreno III, the Property Owner for the Property located at 822 Georgia St (APN. # 627-111-19), **Imperial Beach, CA, 91932** in the following manner:

- Personally Served Signed: _____ Refused: _____ Other: Vacant Lot
- Mailed Regular Mail
- Mailed Certified Mail, Return Receipt
- Posted at Property

In accordance with Chapters 8.50, 1.12, 1.16, and 1.22 of the Imperial Beach Municipal Code.

**DAVID GARCIAS
CODE COMPLIANCE OFFICER
CITY OF IMPERIAL BEACH**

**State of California
County of San Diego ss:**

On: December 6, 2010 **DAVID GARCIAS**, personally appeared before me, **Jacqueline Hald**, City Clerk, known to me to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal:

Signature Jacqueline M. Hald (Seal)
JACQUELINE M. HALD, CITY CLERK



STAFF REPORT CITY OF IMPERIAL BEACH

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

MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR
DAVID GARCIAS, CODE COMPLIANCE OFFICER

SUBJECT: 715 HOLLY AVE – NOTICE TO ELIMINATE SUBSTANDARD
AND PUBLIC NUISANCE CONDITIONS – ABATEMENT OF AN
ABANDONED / INOPERATIVE VEHICLE

BACKGROUND / DISCUSSION:

On July 13, 2010, staff received a Citizen Complaint stating that the property located 715 Holly Avenue was abandoned.

On July 14, 2010, staff conducted a visual inspection from the public sidewalk and observed overgrown and dead vegetation in the yards and on the park way, and an inoperative Volkswagen bus in the driveway. Staff could not enter the property because the front yard gate was locked.

On July 15, 2010, staff completed and mailed a Notice of Violation to the property owner to abate the following municipal code violations:

- **IBMC 12.48.120.** Maintenance of vegetation by adjacent property owners.
- **IBMC 1.16.010.G.** Overgrown vegetation.
- **IBMC 1.16.010.H.** Dead or hazardous vegetation.
- **IBMC 1.16.010.R.** Maintenance of Premises.
- **IBMC 8.44.020.** The presence of an abandoned / inoperative vehicle or parts thereof on private property.

On July 26, 2010, staff re-inspected the property and observed the violations were unchanged.

On August 2, 2010, staff re-inspected the property and observed the violations were unchanged. Staff contacted the Sheriff's Department and a Sheriff's Deputy conducted a welfare check of the home in search of the elderly owner.

On August 4, 2010, staff issued Administrative Citation #A10049, assessing a \$300.00 fine against the property for the unabated violations.

On September 7, 2010, October 6, 2010, and November 4, 2010, staff re-inspected the property and observed the violations were unchanged.

On December 1, 2010, the City Council adopted Resolution No. 2010-6971 declaring that

weeds growing on and in front of the properties listed below constituted a public nuisance and directed staff to proceed with abatement of the violations pursuant to Chapter 8.40 of the Imperial Beach Municipal Code and Government Code section 39560 et. seq.

On December 2, 2010, staff posted and served the property owner a notice to eliminate substandard and public nuisance conditions on the property regarding the presence of an abandoned / inoperative vehicle on private property. The violation of IBMC 8.44.020 is to be corrected by December 15, 2010. The owner was notified by mail of the public hearing scheduled for the same date.

By the time of the December 15, 2010, City Council Meeting staff may have additional items to discuss.

FISCAL ANALYSIS:

August 4, 2010, Administrative Citation #A10049, \$300.00 fine assessed. The unpaid fine is subject to delinquent penalties and interest.

Abatement costs may vary. All costs shall be assessed to the individual property 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 the Mayor and City Council:

1. Declare the public hearing open, and receive the report.
2. Entertain any objections or protests.
3. Close the Public Hearing.
4. Consider a motion to adopt Resolution No. 2010-6980 authorizing staff to seek legal action to either compel the property owner to abate the inoperative / abandoned vehicle on the property or to obtain an abatement warrant to cause the abatement to be completed by City forces or private contract.
5. Staff will return in a future council meeting with an abatement cost report. Staff shall keep an account of the cost of abatement on the parcel of land where the abatement work is conducted, and shall submit to the City Council all costs of abatement for their consideration at next available council meeting.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

- **City Council –DRAFT- Resolution #2010-6980, 715 Holly Ave**
- **Notice to Eliminate Conditions, dated December 2, 2010**
- **Declaration of Service, dated December 6, 2010**

RESOLUTION NO. 2010-6980

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, FINDING AND DECLARING THAT THE NOTICE AND ORDER TO ELIMINATE SUBSTANDARD AND PUBLIC NUISANCE CONDITION(S) AND THE ABATEMENT OF AN ABANDONED / INOPERATIVE VEHICLE, REGARDING THE PROPERTY AT 715 HOLLY AVENUE IS APPROPRIATE AND ASSESSING COSTS OF ABATEMENT.

WHEREAS, On July 13, 2010, staff received a Citizen Complaint stating that the property located 715 Holly Avenue was abandoned; and

WHEREAS, On July 14, 2010, staff conducted a visual inspection from the public sidewalk and observed overgrown and dead vegetation in the yards and on the park way, and an inoperative Volkswagen bus in the driveway. Staff could not enter the property because the front yard gate was locked; and

WHEREAS, On July 15, 2010, staff completed and mailed a Notice of Violation to the property owner to abate violations the following municipal code violations:

- **IBMC 12.48.120.** Maintenance of vegetation by adjacent property owners.
- **IBMC 1.16.010.G.** Overgrown vegetation.
- **IBMC 1.16.010.H.** Dead or hazardous vegetation.
- **IBMC 1.16.010.R.** Maintenance of Premises.
- **IBMC 8.44.020.** The presence of an abandoned / inoperative vehicle or parts thereof on private property; and

WHEREAS, On July 26, 2010, staff re-inspected the property and observed the violations were unchanged; and

WHEREAS, On August 2, 2010, staff re-inspected the property and observed the violations were unchanged. Staff contacted the Sheriff's Department and a Sheriff's Deputy conducted a welfare check of the home in search of the elderly owner; and

WHEREAS, On August 4, 2010, staff issued Administrative Citation #A10049, assessing a \$300.00 fine against the property for the unabated violations; and

WHEREAS, On September 7, 2010, October 6, 2010, and November 4, 2010, staff re-inspected the property and observed the violations were unchanged; and

WHEREAS, December 1, 2010, the City Council adopted Resolution No. 2010-6971 declaring that weeds growing on and in front of the properties listed below constituted a public nuisance and directed staff to proceed with abatement of the violations pursuant to Chapter 8.40 of the Imperial Beach Municipal Code and Government Code section 39560 et. seq; and

WHEREAS, On December 2, 2010, staff posted and served the property owner a notice to eliminate substandard and public nuisance conditions on the property regarding the presence of an abandoned / inoperative vehicle on private property. The violation of IBMC 8.44.020 is to be corrected by December 15, 2010. The owner was notified by mail of the public hearing scheduled for the same date; and

WHEREAS, testimony was presented to the City Council at the public hearing on

December 15, 2010 regarding conditions at 715 Holly Avenue; 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 the Notice and Order to Eliminate Substandard and Public Nuisance Condition(s) and the Abatement of an Abandoned Inoperative Vehicle at the property located at 715 Holly Avenue is appropriate and assessing costs of abatement.

SECTION 2: The cost of abatement is approved as follows:
All costs approved in this paragraph will be subject to review by the City Council at a hearing pursuant to Chapter 8.44 of the Imperial Beach Municipal Code after abatement efforts have been completed, before any lien may be imposed on the subject properties. 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. 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.

SECTION 3: The City Council authorizes staff to seek legal action to either compel the property owner to clean up the property or to obtain an abatement warrant to cause the abatement to be completed by City forces or private contract.

SECTION 4: The City Manager may cause a copy or copies of this Resolution to be conspicuously posted, as the City Manager may deem necessary.

SECTION 5: 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 regular meeting held on the 15th day of December 2010, by the following 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. 2010-6980 – A Resolution of the City Council of the City of Imperial Beach, California, FINDING AND DECLARING THAT THE NOTICE TO ELIMINATE SUBSTANDARD AND PUBLIC NUISANCE CONDITION(S) AND THE ABATEMENT OF AN ABANDONED / INOPERATIVE VEHICLE, REGARDING THE PROPERTY AT 715 HOLLY AVENUE IS APPROPRIATE AND ASSESSING COSTS OF ABATEMENT.

CITY CLERK

DATE

NOTICE TO ELIMINATE SUBSTANDARD AND PUBLIC NUISANCE CONDITIONS

The City Manager has determined that a condition exist which constitutes substandard and public nuisance conditions, pursuant to Chapter 8.44 Nuisance Vehicles of the Imperial Beach Municipal Code.

PROPERTY OWNER(S): CARMELA LOMBARDI-MUNIZZA, 715 HOLLY AVE, IMPERIAL BEACH, CA 91932

ASSESSOR'S RECORD(S): Lot: 62, as found on Map 3813 – Ream Park or, Property located at 715 Holly Ave, Imperial Beach, CA 91932, also known as Assessor's Parcel No 632-233-03-00.

ON DECEMBER 2, 2010, THE CONDITIONS DETERMINED TO CREATE A SUBSTANDARD AND PUBLIC NUISANCE ARE AS FOLLOWS.

IBMC 8.44.020. Inoperable or abandon vehicles may not be stored on property.

- Remove all the inoperable, wrecked, and dismantled vehicles from the property and from the front, rear, and side yards.

IT IS AN INFRACTION TO REMOVE OR DEFACE THIS NOTICE.

CASE #10-275 DECEMBER 2, 2010 – 715 Holly Ave Page 1 of 3

- July 13, 2010: Citizen Complaint received identifying the above violations.
- July 15, 2010: a Notice of Violation issued to property owner to abate the inoperable / abandoned vehicle on the property.
- July 26, 2010: Staff inspected and observed the violations were unchanged.
- August 2, 2010: Staff inspected and observed the violations were unchanged. The Sheriff's conducted a welfare check of the home in search of the elderly owner.
- August 4, 2010: Staff issued an Administrative Citation A10049 (fine \$300.00), to property owner to abate violations.
- September 7, 2010: Staff inspected and observed the violations were unchanged.
- October 6, 2010: Staff inspected and observed the violations were unchanged.
- November 4, 2010: Staff inspected and observed the violations were unchanged.
- December 1, 2010: City Council met regarding weed abatement and directed staff to proceed with abatement of the inoperable / abandoned vehicle on the property.

THESE ARE THE VIOLATIONS IDENTIFIED AT 715 Holly Avenue:

Pursuant to Imperial Beach Municipal Code Chapters 1.12, 1.16, 8.44, and 8.50, all buildings, structures, properties, or portions thereof which are determined by Authorized personnel to be a public nuisance, substandard, or unsafe are declared to be unsafe or substandard and are declared to be a public nuisance, and be abated be repair, rehabilitation, demolition, removal or cleaning.

The property located at the **715 Holly Avenue, Imperial Beach, CA 91932** must be cured of all violations on or before **December 15, 2010**. The City may also continue Public Nuisance Abatement proceedings against you and your property and will secure payment of such expense by assessment and lien, as provided by Imperial Beach Municipal Code Chapters 1.12, 1.16, 8.44, and 8.50. Administrative fees of up to \$500.00 may be assessed. In addition to an administrative fee, beginning on the date of this notice, civil penalties of \$50.00 per day per violation will be imposed upon the nuisance property for each day the violations exist.

Pursuant to Imperial Beach Municipal Code Chapter 1.16 and 8.44 if a nuisance is not completely abated by the property owner within the designated abatement period, then the City Manager or the City Manager's designee must cause the abatement to be completed by City forces or private contract. The City Manager or the City Manager's designee is expressly authorized to enter the premises on which the nuisance exists for abatement purposes.

IBMC 8.44.110. Inoperable, abandoned, wrecked, or dismantled vehicles Abatement hearing procedures and findings

A. All hearings under this chapter shall be held before the city council, which shall hear all facts and testimony it deems pertinent. Such facts and testimony may include testimony on the condition of the vehicle or parts thereof and the circumstances concerning its location on the private property or public property. The city council shall not be limited by the technical rules of evidence. If a sworn statement denying responsibility is submitted pursuant to Section 8.44.100 it shall be received into evidence with, to or without the property owner's presence at the hearing.

B. The city council may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purpose of this chapter. It may delay the time for removal of the vehicle or parts thereof if, in its opinion, the circumstances warrant. At the conclusion of the public hearing, the city council may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled or is inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as provided in this chapter. The council may make both the cost of removal and administrative costs, as defined in Section 8.44.030 and pursuant to Section 8.44.100, a lien against

the property on which the nuisance existed and a personal obligation of the property owner unless otherwise prohibited from doing so. A notice of the council's decision shall be mailed to all persons notified of the hearing or requesting such notice.

C. If it is determined at the hearing that the vehicle was placed on the land without the consent of the property owner and that the property owner did not subsequently acquiesce to its presence, the city may not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such cost from such owner.

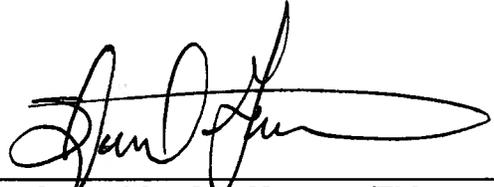
The cost for abating a nuisance, as confirmed by the City Council, is a special assessment against the lot or parcel of land to which it relates. Upon recording a notice of lien in the office of the county recorder, the cost is a lien on the property for the amount of the assessment. The assessment will be collected at the same time and in the same manner as ordinary municipal taxes are collected and, in case of delinquency, is 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 apply. The assessment is also a personal obligation of the property owner.

The City of Imperial Beach City Council will consider this matter at its hearing on December 15, 2010, 6:00 PM at 825 Imperial Beach Boulevard, at which time the owner(s) of said property may appear and present reason why civil penalties and administrative costs may not be assessed, and why clearing or repair should not be required.

CITY OF IMPERIAL BEACH

Date Posted: DEC - 2 2010

By: _____
Signed for City Manager/Title



CITY OF IMPERIAL BEACH
CODE COMPLIANCE DIVISION

The City of
Imperial
Beach



**COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE DIVISION**

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932

DECLARATION OF SERVICE

December 6, 2010

I, **DAVID GARCIAS**, hereby certify on penalty of perjury, that on December 2, 2010, at approximately 4:00 pm, Pacific Daylight Time, I served a Notice Eliminate Substandard and Public Nuisance Conditions to Carmela Lombardi-Munizza, the Property Owner for the Property located at 715 Holly Ave (APN. # 632-233-03), **Imperial Beach, CA, 91932** in the following manner:

- Personally Served Signed: _____ Refused: _____ Other: Fence line Secured with padlock
 Mailed Regular Mail
 Mailed Certified Mail, Return Receipt
 Posted at Property

In accordance with Chapters 8.50, 1.12, 1.16, and 1.22 of the Imperial Beach Municipal Code.

**DAVID GARCIAS
CODE COMPLIANCE OFFICER
CITY OF IMPERIAL BEACH**

**State of California
County of San Diego ss:**

On December 6, 2010 **DAVID GARCIAS**, personally appeared before me, **Jacqueline Hald**, City Clerk, known to me to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal:

Signature Jacqueline M. Hald (Seal)
JACQUELINE M. HALD, CITY CLERK



STAFF REPORT CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: DECEMBER 15, 2010

ORIGINATING DEPT.: FINANCE DEPARTMENT

SUBJECT: RESOLUTION NO. 2010-6976 – REVISING THE PARKING AND MISCELLANEOUS FINE SCHEDULE DUE TO STATE LEGISLATION

BACKGROUND:

Recent State Budget legislation further increased the State's portion of the fine amount relative to the City of Imperial Beach parking citations. This report increases the parking fine citation amount by \$3 to comply with the adopted State legislation.

FISCAL ANALYSIS: The City's parking ticket fine is \$50. For each ticket the City must remit \$3.00 for the criminal justice facility and county courthouse construction fund, plus \$2.00 for the County's General Fund for trial court administration, plus \$4.50 for State courthouse facilities. In addition if the City issues a citation for lapsed auto registration or equipment violation, the City must remit 50% of the fine. If the parking citation is related to disabled parking the City must remit 20% of the fine.

Recently passed state legislation has added an additional \$3.00 per ticket for trial court funding. With this increase, the total diversion of City fine revenue on a typical parking ticket is now 25% of the original ticket amount with no reimbursement to the City for the enforcement cost.

DEPARTMENT RECOMMENDATION:

1. Declare the public hearing open;
2. Receive public testimony and staff report;
3. Close the public hearing; and
4. Adopt Resolution No. 2010-6976.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

Attachment 1: Resolution 2010-6976, including Exhibit A - Fine Schedule

RESOLUTION NO. 2010-6976

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA REVISING THE PARKING AND MISCELLANEOUS FINE SCHEDULE

WHEREAS, the State of California has adopted SB857 imposing an additional \$3.00 on parking citation: and

WHEREAS, the City must collect this additional charge.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach that the Parking and Miscellaneous Fine Schedule is amended to include the following as see on Exhibit A:

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of December 2010, by the following roll call vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD
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. 2010-6976 – A Resolution of the City Council of the City of Imperial Beach, California REVISING THE PARKING AND MISCELLANEOUS FINE SCHEDULE

CITY CLERK

DATE

**CITY OF IMPERIAL PROPOSED IMPERIAL BEACH
PARKING CITATION FEE SCHEDULE**

EXHIBIT A

CODE	DESCRIPTION	WITHIN 10 DAYS	WITHIN 30 DAYS	AFTER 30 DAYS
21113(A)	ILLEGAL PRKG PUBLIC GRNDS	53	63	103
22500(A)	PARKED IN INTERSECTION	53	63	103
22500(B)	PARKED ON CROSSWALK	53	63	103
22500 (C)	SAFETY ZONE	53	63	103
22500(E)	BLOCKING DRIVEWAY	53	63	103
22500(D)	FIRE STATION DRIVEWAY WITHIN 15 FT.	53	63	103
22500(F)	PARKED ON SIDEWALK	53	63	103
22500(G)	OBSTRUCTING TRAFFIC	53	63	103
22500(H)	DOUBLE PARKED	53	63	103
22500(I)	BUS ZONE, NO STOPPING, PARKING, STANDING	278	278	278
22500(L)	PARKING - IN WHEELCHAIR ACCESS	424	424	424
22500.1	PARKED ON FIRE LANE	333	333	333
22502(A)	OVER 18" FROM CURB	53	63	103
10.36.020 IBMC	POSTED NO PARKING	53	63	103
10.36.025 IBMC	USE OF STREETS FOR HABITATION PROHIBITED	78	88	153
10.36.030 IBMC	TEMP NO PARKING/STREET SWEEPING	53	63	103
10.36.050 IBMC	LIMITED TIME PARKING	53	63	103
10.36.070 IBMC	PARKED OPPOSING TRAFFIC	53	63	103
10.36.080b IBMC	REPAIR/WASHING PROHIBITED	53	63	103
10.36.090 IBMC	PARKING IN RESTRICTED SCHOOL ZONE	53	63	103
10.36.100 IBMC	PARKING PROHIBITED, NARROW STREETS	53	63	103
10.36.110 IBMC	RECREATIONAL VEHICLES/TIME LIMIT	53	63	103
10.36.140 IBMC	HANDICAP PARKING ONLY	424	421	421
10.36.150 IBMC	COMM VEHICLE IN RES AREA	78	88	153
10.36.160 IBMC	PARKED ON BEACH	53	63	103
10.36.160(B) IBMC	VIOLATION OF SIGNS	53	63	103
10.36.162 IBMC	PARKED ON STREET 72 HOURS	53	63	103
10.36.164 IBMC	INOPERATIVE VEH ON STREET	53	63	103
10.36.166 IBMC	WITHIN 100FT OF INTERSECTION	53	63	103
10.36.180 IBMC	STREET SWEEPING	53	63	103
10.40.030 IBMC	PARKING FEES REQUIRED	53	63	103
10.40.040 IBMC	PARKED OUTSIDE SPACE	53	63	103
10.44.020 IBMC	RED, YELLOW, GREEN AND WHITE CURB	53	63	103
10.44.040 IBMC	LOADING ZONES/OTHER THAN LOAD, UNLOAD	53	63	103
10.44.050 IBMC	PARKED IN ALLEY	53	63	103
10.44.060 IBMC	BUS ZONES, NO PARKING, STOPPING OR STANDING	278	278	278
	STATE VEHICLE CODE			
5200	LICENSE PLATE MISSING	53	63	103
5201	LICENSE PLATE NOT SECURE	53	63	103
5204(A)	PARKED WITHOUT CURR TABS	53	63	103
22507.8	HANDICAP PARKING ONLY	424	424	424
22514	FIRE HYDRANT	53	63	103
22522	WITHIN 3' OF ACCESS RAMP	424	424	424
22523(A)	VEH ABANDONED ON HIGHWAY	53	63	103
22523(B)	VEH ABANDONED	53	63	103
22651.2A	NO PARKING/SPECIAL EVENT	53	63	103
22651R	BLOCKING LEGALLY PARKED VEH	53	63	103
24401	DIMMED LIGHTS ON PARKED VEHICLE	38	48	73
26708(A)	SUNSCREEN ON SIDE WINDOW	53	63	103
27155	FUEL TANK CAPS	48	58	93
28071	REAR BUMPER REQUIRED	53	63	103
4000(A)(1)	VEHICLE UNREGISTERED	53	63	103

+ \$13.00 for DMV Hold



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: PUBLIC WORKS
SUBJECT: PROPOSED BSA EAGLE PROJECT PRESENTATION

BACKGROUND:

The public right-of-way adjacent to sewer pump station # 8 located at the Civic Center complex is proposed to be improved to match the landscape installed street-side of the Fire Station, Sheriff's Station, and City Hall. The public right-of-way section adjacent to sewer pump station # 8 was grass. Additionally pump station # 8 roof line woodwork façade is deteriorated with large sections of paint chipping, bulging, or otherwise damaged.

Boy Scouts of America (BSA) has an award program by which boys who complete certain advancement requirements, perform a significant community service project and meet identified character standards are awarded the rank of Eagle. It is the opinion of the City staff that the project identified above – installation of new landscape in the right-of-way and painting of the sewer pump station roof line wood work - qualifies as a "significant community service project."

DISCUSSION:

BSA Troop 53, Eagle Scout Candidate Kenny McClenahan has indicated an interest in the installation of new landscape in the right-of-way and painting of the sewer pump station roof line wood work as his community service project. Staff is willing to work with Mr. McClenahan in designing and constructing the project. Mr. McClenahan would design the improvements, plan, organize and supervise the construction of the project, should City Council approve his project.

ENVIRONMENTAL DETERMINATION:

This project was evaluated for CEQA requirements and is determined to be Categorically Exempt per section 15301 - Existing Facilities – Class 1.c.

FISCAL IMPACT:

The cost of the project would come from the Operating and Maintenance (O&M) budget from Street Maintenance and from Sewer Maintenance Divisions. The total project costs are estimated at approximately \$2,000.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Receive a presentation from Mr. McClenahan regarding the proposed improvements.
3. Comment and direct staff and Mr. McClenahan regarding the design of the proposed project
4. Authorize the City Manager to sign the Eagle Project plan for Mr. McClenahan to continue the project development and construction as approved by City Council and City staff.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:



AGENDA ITEM NO. 6.2

**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: DECEMBER 15, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR *GW*
GERARD SELBY, REDEVELOPMENT COORDINATOR *GS*

SUBJECT: PROPOSED AMENDMENT OF EXCLUSIVE NEGOTIATION AGREEMENT WITH SUDBERRY PROPERTIES, INC.

BACKGROUND

In December 2008, the Imperial Beach Redevelopment Agency ("Agency") authorized staff to negotiate Purchase and Sale Agreements for the North Island Credit Union and Miracle Shopping Center properties ("Site"). The Agency completed the purchase of the North Island Credit Union property in December 2008 and Miracle Shopping Center in February 2009. In February 2009, the Agency issued a Request for Qualifications/Proposals for a Real Estate Development Opportunity for the site and in July 2009, staff was directed by the Agency to negotiate a draft Exclusive Negotiation Agreement ("ENA") with Sudberry Development Inc. ("Sudberry") for the Agency's review and approval.

In September 2009, the Agency entered into an ENA with Sudberry. Under the terms of the ENA, the Agency's Executive Director is authorized to extend the negotiation period. The Negotiation Period has been extended twice. However, in accordance with the terms of the ENA, "If the Agency has not signed the Disposition and Development Agreement ("DDA") by the expiration of the Negotiation Period (as the Negotiation Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate, unless the Agency, in its sole discretion, agrees in writing to an extension."

DISCUSSION

Since the execution of the ENA, Sudberry and staff have worked to refine two options for direct vehicular access to the site. With the support of several consultants, Sudberry and staff presented several options to Caltrans staff for their review and comment. Sudberry, Agency and City staff, and Caltrans have gone back and forth in discussing and reviewing various options for access. Late in November 2010, Sudberry's preferred vehicular access option of two separate access points was rejected by Caltrans. Caltrans prefers to restrict the vehicular access to one right-in entrance and a right-out exit. While this option for vehicular access may

not optimize the site's vehicular access, it does meet Caltrans' standards and has the backing of Caltrans staff.

The primary obstacle to moving forward on the development of a DDA has been the issue of direct vehicular access to the site, the number and location of entrances and exits, and the type of turning movements that would be allowed ("right-in and right-out"). While Caltrans prefers to restrict the access to one right-in entrance and a right-out exit, Sudberry's Traffic Consultants believe that with additional analysis of the vehicle movements, Caltrans can be persuaded to allow additional right-in and right-out turn movements on Palm Avenue/SR-75.

The ENA with Sudberry terminates on December 23, 2010, unless the Agency decides to approve an extension. Sudberry is requesting a 90-working day extension of the ENA. An alternative to extending the ENA is to allow the ENA to terminate and seek a new developer to develop the site. Staff does not recommend this course of action. Sudberry is an outstanding company with an excellent reputation for building and managing commercial/retail development. They have worked diligently and in good faith to create a development that would optimize the site's location.

Sudberry has requested 90-working days, however, staff believes that 120-business days will be needed to complete the work with Caltrans and develop a draft DDA.

ENVIRONMENTAL DETERMINATION

Concurrent with the submittal of a Development Application, the Agency will identify the appropriate environmental documentation for the project. Sudberry is responsible for the preparation of the environmental documentation.

FISCAL IMPACTS

There is no direct fiscal impact with the requested action.

DEPARTMENT RECOMMENDATION

Staff recommends that the Redevelopment Agency approve an extension to the Negotiation Period for 120 business days for the purpose of entering into a Disposition and Development Agreement with Sudberry Properties Inc.

EXECUTIVE DIRECTOR RECOMMENDATION

Approve Department recommendation.



Gary Brown, Executive Director

ATTACHMENTS

Attachments: Attachment 1 - R-10-239
Attachment 2 – Amendment to Exclusive Negotiation Agreement
Attachment 3 – Sudberry Letter

RESOLUTION NO. R-10-239

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY TO AUTHORIZE THE EXECUTIVE DIRECTOR TO AMEND THE EXCLUSIVE NEGOTIATION AGREEMENT WITH SUDBERRY PROPERTIES INC.

The Imperial Beach Redevelopment Agency ("Agency") does hereby resolve as follows:

WHEREAS, the Agency has engaged in activities necessary to carry out and implement the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area [the "Project"]; and has adopted an Implementation Plan for the Project in accordance with California Health and Safety Code Section 33490 [the Implementation Plan]; and

WHEREAS, the redevelopment of the North Island Credit Union and Miracle Shopping Center properties are specifically identified as a priority project in the Implementation Plan; and

WHEREAS, in December 2008 the Agency authorized staff to negotiate Purchase and Sale Agreements for the North Island Credit Union and Miracle Shopping Center properties ("Site"); and

WHEREAS, the Agency completed the purchase of the North Island Credit Union property in December 2008 and Miracle Shopping Center in February 2009; and

WHEREAS, the Agency issued a Request for Qualifications/Proposals for a Real Estate Development Opportunity; and

WHEREAS, in July 2009 the Agency directed Executive Director to negotiate a draft Exclusive Negotiation Agreement ("ENA") with Sudberry Development Inc. for Agency review and approval; and

WHEREAS, in September 2009, the Agency entered into an Exclusive Negotiation Agreement with Sudberry Properties Inc. for the purpose of entering into a Disposition and Development Agreement for the development of the 9th & Palm Redevelopment Project;

WHEREAS, Sudberry Properties Inc. has requested that the Agency extend the negotiation period;

WHEREAS, in order to implement the Redevelopment Plan, the Agency wishes to amend the Exclusive Negotiation Agreement with Sudberry Properties Inc. by extending the negotiation period for 120 business days.

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

The Executive Director is authorized to execute an amendment to the Exclusive Negotiation Agreement with Sudberry Properties Inc. by extending the negotiation period for 120 business days.

AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT
By and Between
IMPERIAL BEACH REDEVELOPMENT AGENCY
And
SADBERRY PROPERTIES, INC.

THIS AMENDMENT TO THE AGREEMENT (the "Agreement") is entered into this ____ day of _____ 2009 ("Effective Date"), by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and SADBERRY PROPERTIES, INC., a California corporation (the "Developer"), on the terms and provisions set forth below. The Agency and Developer may sometimes be referred to herein individually as "Party" and collectively as "Parties."

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

WHEREAS, AGENCY desires to amend the Agreement between the Agency and the Developer; and

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

A. [§ 102] Period of Negotiations, is hereby amended to read as follows:

1. The Extended Negotiation Period ("Negotiation Period") shall continue from the date the Agency approves and executes this Amendment to Agreement (the "Effective Date") and continue for 90 business days ("Extended Negotiation Period"). If a DDA has not yet been executed, upon the termination of the Extended Negotiation Period, then this Agreement shall automatically terminate, unless the Agency, in its sole discretion, agrees in writing to an extension.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Amendment to Agreement on the respective dates set forth below.

Agency:

Developer:

IMPERIAL BEACH REDEVELOPMENT
AGENCY

SADBERRY PROPERTIES, INC.

By: _____

By: _____

Dated: _____

Dated: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

Agency Counsel

Dated: _____

RECEIVED

2010 DEC -6 P 4: 07

CITY MANAGER/PERSONNEL
CITY CLERK OFFICES*Sudberry Properties, Inc.*5465 Morehouse Drive, Suite 260
San Diego, CA 92121-4714
Phone: 858-546-3000
Fax: 858-546-3009
www.sudberryproperties.com

December 2, 2010

Mr. Gary Brown
Agency's Executive Director / City Manager
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91937**RE: Extension of Exclusive Negotiation Agreement**

Dear Mr. Brown:

Please let this letter serve as a request for written consent to extend for 90 working days from 12/23/10 expiration date of the executed Exclusive Negotiation Agreement (ENA). As the City is aware, we are presently working in conjunction with the City of Imperial Beach and Caltrans's on the access to this development. Additionally, both we and the City of Imperial Beach are pursuing a better access off of Palm Ave and SR 75 to accommodate the retail development and the future Palm Avenue Commercial Corridor Master Plan. On Monday of this week, 11/29/10, Sudberry Properties received the Caltrans response and comments regarding the revised site plan, map and traffic signal analysis. Due to the time frame in receiving the Caltrans response, Sudberry Properties requests this extension to the Exclusive Negotiation Agreement. We highly value the relationship we have established with the City and will continue to give this development and the City of Imperial Beach our very best.

Please sign where indicated as acceptance of the extension and return to my attention. If you have any questions, please contact me or Estean Lenyoun.

Regards,
SUDBERRY PROPERTIESEstean Lenyoun
Director, Urban Redevelopment**By: City of Imperial Beach**
Agency's Executive Director
City Manager_____
Gary Brown

Date: _____



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: DECEMBER 13, 2010

**ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR *GW***

**SUBJECT: UNITED STATES COAST GUARD (USCG) MOORING
BALLAST POINT (MBP) DREDGE PROJECT**

BACKGROUND:

In January of 2010, the United States Coast Guard (USCG) was preparing to carry out regular maintenance dredging at its Mooring Ballast Point (MBP) facility at Point Loma. At that time, the Army Corps of Engineers was also planning its maintenance dredge of the San Diego Harbor Approach and Entry Channel. As such, it was decided and subsequently reported to the City Council that the two projects would be "merged" and carried out together. Due to excessively high bids received for the project, however, the Army Corps chose to delay their project in order to equip their own dredge with a pump-out mechanism sufficient to deposit the dredged sand into the nearshore environment of Imperial Beach.

Out of operational necessity, however, the USCG must still move forward with their project. Approximately 32,900 cubic yards of material is expected to be dredged from the MBP and is proposed to be deposited in the nearshore off Imperial Beach. As part of this effort, a Sampling and Analysis Plan (SAP) was prepared and carried out for the sampling and testing of the dredge sediment to determine its suitability for placement in the near shore off Imperial Beach just south of the Imperial Beach Pier.

Over the years, the USCG has routinely conducted maintenance dredging of sediments within their MBP facility. This proposed maintenance dredging will be conducted under their United States Army Corps of Engineers, Los Angeles District (USACE) permit and Regional Water Quality Control Board (RWQCB) Water Quality Certificate. The MBP dredge area is located on lands owned by the Federal Government, therefore, there is no California State Lands Lease required.

USCG is located at the southern end of Point Loma within the Naval Submarine Base (see Attachment 1). The waterfront area located near the proposed dredge area is industrialized. Four stormwater outfalls discharge into the area. Potential chemicals of concern associated with an industrialized waterfront include metals, pesticides, and polycyclic aromatic hydrocarbons (PAHs), none of which were found in significant enough levels to prevent the use of the dredged for beach renourishment purposes.

Shoaling (the build-up of sand on the ocean floor) at MBO occurs when suspended material (i.e., sand) from the faster moving harbor channel moves into the protected mooring area where it settles along the beach. As the sand accretes, it builds the beach out until it impacts the floating docks. Surveys conducted early this year indicated that approximately 26,500 cubic yards of material will need to be dredged in order to achieve the permitted design depth of 30 feet below Mean Lower Low Water (MLLW) plus two feet over depth. Recent estimates place the amount of sand available for dredging at 32,900 cubic yards.

The MBP area was last dredged in 2000 (34,844 cubic yards). Based upon sediment analysis, all of that material was deposited in the nearshore off Imperial Beach south of the pier. The maintenance dredge prior to that occurred in 1994 (41,000 cubic yards) and all of that material was also deposited in the nearshore of Imperial Beach.

The USCG conducted a series of chemical and biological assessments of the sediments associated with its periodic dredging activities at MBP. All of the recent test results (from 1994 and 2000) have identified the dredged material as "suitable for unconfined aquatic disposal" (SUAD). Sediments tested in 2005 were also determined to be SUAD, however, after a survey of the site the USCG determined that dredging was not needed at that time. The grain size analysis indicates that the sediment is primarily sandy with relatively low level of chemical concentrations. No bioassay results have shown significant toxicity of the material.

DISCUSSION:

Sediment at MBP has historically been predominantly sand (over 80% sand), therefore, dredged materials have been determined to be suitable for use as beach replenishment off Imperial Beach in the nearshore deposit site south of the pier. The current USCG MBP samples for this project were primarily comprised of sand (between 95.7 and 98.4 percent) with only a minimal amount of gravel, silt and clay. This is comparable to the primarily sand makeup (91.5 percent) of the IB receiver site sample. Based on these results, the MBP sediment samples have sufficient sand content to be suitable for use as beach replenishment. The current USACE permit allows for the placement of the material in the Imperial Beach area or in the offshore disposal site known as LA-5, located 5 miles southwest of Point Loma.

The Sampling and Analysis Plan (SAP) describes the sediment sampling activities used to characterize sediment from the permitted dredge footprint. Evaluation of the material was conducted in accordance with the Ocean Testing Manual (OTM) of the United States Environmental Protection Agency (EPA) and the USACE. The chemical and physical testing of the material was designed to determine if the material is suitable for use as beach replenishment at Imperial Beach. Based on the weight-of-evidence from the results of the physical and chemical analyses, all sediments from the USCG MBP appear to be suitable for unconfined aquatic disposal (SUAD) and suitable for use as beach replenishment. It is proposed, therefore, that sediments from the USCG MBP be used for beach replenishment purposes in the nearshore off Imperial Beach in accordance with USACE, Los Angeles District permit (No. 2001-00386-RLK) and Regional Water Quality Control Board Water Quality Certificate (Order No. 99-34 Facility ID 9 000000886). Additionally, the Environmental Protection Agency's (EPA's) sediment team reviewed the testing results for the USCG Mooring Ballast Point Results Report. The EPA determined, based on the chemistry and the grain size of the material (95-98% sand) that the sediment is chemically and physically suitable for beach placement at Imperial Beach.

Based upon the 2009 survey data, it was initially anticipated that approximately 26,500 cubic yards would be dredged during this maintenance episode. Current estimates place the amount

at 32,900 cubic yards. The dredging is currently planned to occur at MBP in February 2011 and must be completed by March 31, 2011 to avoid the breeding season of nesting shorebirds.

The project is expected to be carried out using a clamshell dredge in which sand is "grabbed" from the sea bottom and placed into a barge for transport to the receiver site where it is then released (see Attachment 3). In discussions with their staff, the USCG has stated that they will place the dredged sediment through a 12" x 12" grate as a debris management measure to prevent debris from being placed in or near the Imperial Beach coast.

ENVIRONMENTAL IMPACT:

This project is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The project has been thoroughly reviewed by the United States Coast Guard which has determined the project to be categorically excluded under USCG COMDTINST M16475.1D, Figure 2-1, CE# 3, and from further environmental documentation, in accordance with Section 2.B.2, since implementation of this project will not result in any:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under Section 106 or the National Historic Preservation Act; or
4. Inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.

Additionally, this project was previously incorporated into the Army Corps of Engineers Harbor Maintenance Project, for which an Environmental Assessment was prepared indicating that that project would not cause any significant adverse impacts to the environment. Together, the previously proposed Army Corps and Coast Guard project would have dredged and placed up to 150,000 cubic yards of sand in the nearshore off Imperial Beach. Given the substantial decrease in size and scope of the USCG project, and given the results of the chemical and grain-size analysis, it is expected that this project will also not cause any significant adverse impacts to the environment.

TIDELANDS ADVISORY COMMITTEE:

This project will be presented to the Tidelands Advisory Committee on Monday, December 13, 2010, for their recommendation to the City Council. Staff will provide that recommendation during the City Council meeting on Wednesday, December 15, 2010.

FISCAL IMPACT:

There is no direct fiscal impact to the City of Imperial Beach.

DEPARTMENT RECOMMENDATION:

That the City Council receive the report and comment as necessary and support the USCG Mooring Ballast Point Dredge project subject to implementation of a debris management plan including the use of a grate through which the dredged sand will be placed.

CITY MANAGER RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Mooring Ballast Point Location, Dredge Footprint and Sediment Sample Locations
2. Sampling Locations at the Receiver Site (Imperial Beach)
3. Clamshell Dredge Images



NOTES:

1. AERIAL PHOTO WAS PURCHASED FROM <http://www.historicaerials.com>
2. ROAD MAP COURTESY OF ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE (ESRI)

- LEGEND:**
- LA-5 OCEAN DISPOSAL SITE
 - IMPERIAL BEACH DISPOSAL SITE
 - SITE LOCATION

DRAFT

UNITED STATES COAST GUARD
 MOORING BALLAST POINT, SAN DIEGO, CALIFORNIA
SAMPLING AND ANALYSIS PLAN

SITE VICINITY MAP



FIGURE 1

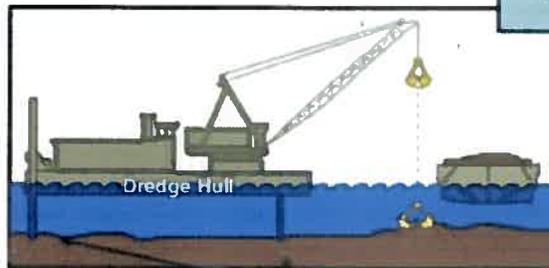
CITY: San Francisco DIV/GROUP: 85 DB ME LD: PIC: PM: TM: TR
 Project #: 3010.0001
 C:\USCG\SanDiegoBayMooringBallastPoint\SamplingAndAnalysisPlan\Mxd\Fig 1 SiteVicinityMap.mxd - 10/2/2009 @ 12:57:13 PM

CLAMSHELL DREDGE

Mechanical Bucket Dredge



Clamshell Bucket



Bottom Dump Barge



"Spuds" hold the barge in place

Dredging in a Bay





AGENDA ITEM NO. 6.4

**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: GARY BROWN, CITY MANAGER
JENNIFER LYON, CITY ATTORNEY**

MEETING DATE: December 15, 2010

**SUBJECT: CONSIDERATION OF MEDICAL
MARIJUANA REGULATIONS**

BACKGROUND:

The City Council adopted a moratorium on medical marijuana dispensaries in July of 2009. In July of 2010, the Council approved an interim ordinance to extend the moratorium on medical marijuana dispensaries in the City to August 18, 2011. The Council also directed staff to bring back a timeline for consideration of permanent regulations related to medical marijuana facilities within the City. In September 2010, the Council approved the following timeline for consideration of an ordinance regulating medical marijuana dispensaries:

- **September 2010-January 2011-** Continue to monitor pending legal issues for their implications on cities' discretion and ability to regulate medical marijuana facilities.
- **January 2011-** Present to Council the main points that would be included in an ordinance and receive Council and community feedback.
- **February-April 2011-** Draft ordinance and submit to Council for first and second readings.
- **April 2011-** Submit ordinance to California Coastal Commission ("CCC") for approval.¹
- **August 2011(or sooner if CCC approves quickly)-** Proposed date for new regulations to take effect.

DISCUSSION:

The decision to adopt regulations related to medical marijuana dispensaries within the City is a policy decision for the City Council to make based on the unique characteristics and concerns of

¹ Any amendments to the City's zoning ordinance will likely not take effect until the CCC approves them. A recent submittal of an LCP amendment by a city related to medical marijuana facilities shows that the process took about 3 months from submittal to approval by CCC.

the City of Imperial Beach. The following is a list of potential options that the Council may wish to consider:

1. Regulate Dispensaries: Similar to what the County of San Diego has adopted, the Council may wish to adopt regulations to allow a limited number of facilities within the City limits under specific conditions. Any distribution activity or enterprise exceeding specified quantities of marijuana would be required to maintain specific operating and security requirements. Further, any dispensary would be limited to certain areas within the City based on specific distancing requirements from sensitive uses such as schools, day care centers, churches, and parks. Fees for processing of the application and regulation by the Sheriff would be required of any facility. (The County's regulations are attached.)
2. Ban Facilities: Based on a recent article published in the Los Angeles Times, approximately 100 cities and at least 9 counties within the State have adopted regulations to ban facilities that distribute medical marijuana. In San Diego County, some cities have adopted bans, including Vista and Oceanside, The *Anaheim* case is still in the appellate process, however, if the United States Supreme Court grants review to the case, it is unlikely that any decision will be issued before the moratorium expires. However, the City Council may decide to consider a ban on dispensaries, and might consider basing this ban on unique characteristics of the City of Imperial Beach such as its size, the location of other facilities in close proximity to the City, the limited amount of appropriate zones for any such use, and other similar factors .
3. Let Moratorium Expire: The City Council may simply want to let the moratorium expire on August 18, 2011 and then rely on the existing zoning code which does not specifically allow medical marijuana facilities to locate in the City. Since 2009, when the City Council adopted the first moratorium on this topic, the legal status of medical marijuana distribution and local authority to regulate it have not received the clear definition that was anticipated, so the City Council may consider this to be the best option.

FISCAL IMPACT:

Drafting proposed regulations will require further staff and legal services.

CITY MANAGER'S RECOMMENDATION:

Consider the proposed options and provide direction to staff so that a draft ordinance (if required) can be presented to the City Council at a January 2011 meeting.



Gary Brown, City Manager

Attachments:

1. Staff Report from City Manager Brown - Subject: Regulation of Medical Marijuana Dispensaries, dated December 15, 2010



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY MANAGER

MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT: GARY BROWN, CITY MANAGER

SUBJECT: REGULATION OF MEDICAL MARIJUANA DISPENSARIES

BACKGROUND:

By adoption and extension of an Interim Urgency Ordinance, the City of Imperial Beach currently has a moratorium on Medical Marijuana Dispensaries that will expire on August 18, 2011. During this moratorium, City staff and the City Attorney have been researching options for the possible regulation of these facilities.

In light of the time necessary to draft the ordinances, hold public hearings, and receive approval from the Coastal Commission for an ordinance that would regulate Medical Marijuana Dispensaries, it is appropriate for the City Council to first decide whether it wishes to allow and regulate the facilities or take another approach to this controversial topic.

DISCUSSION:

Having carefully considered the information gathered regarding the regulation of Medical Marijuana Dispensaries, much of which is attached to this agenda item, it is the City Manger's recommendation that these facilities should not be permitted within the City of Imperial Beach, for the following reasons:

1. Not allowing Medical Marijuana (MM) Dispensaries in Imperial Beach would not deprive those who need it from easy access to it. The Sheriff's Power Point, copy attached, states that a website lists over 60 locations for MM in various cities in the County with 25 such facilities offering delivery.
2. Crimes associated with MM Dispensaries include the following:

In San Francisco from January 2006 to February 2007:

- 3 homicides and 2 attempted homicides
- 6 possessions of a loaded firearm
- 57 robberies and 27 attempted robberies
- 97 aggrieved assaults
- 144 incidents of battery
- 1 forcible rape and 1 attempted rape
- 3 sexual batteries
- 198 burglary and 2 attempted burglaries

In Los Angeles:

- 200% increase in robberies
 - 52.2% increase in burglaries
 - 57.1% increase in aggravated assaults
 - 130.8% rise in burglaries from autos near cannabis clubs in L.A.
 - Use of armed gang members as "security guards"
3. The complexity of regulation and enforcement will place a costly burden on the City's limited resources.
 4. The County has restricted MM Dispensaries to industrial zones/areas only. We cannot do this because we have no industrial zones. Allowing MM Dispensaries in our commercial zone(s) would involve either on-site/indoor growing or delivery of MM to the facility. On-site/indoor growing presents many potential hazards within the dispensary, to the surrounding neighborhoods, and to Public Safety staff, Firefighters and Deputies, and other City staff in Public Works and Community Development. Allowing delivery to MM Dispensaries would present many regulatory and enforcement challenges beyond our current staffing capacities.
 5. Given the small geographic area of our City as a whole and of our commercial zones in particular, if we applied the same or similar distance restrictions from residential zones, schools, places of worship and parks that are applied in other jurisdictions, we would not find an acceptable commercial site within our City. It is not recommended that our residential zones/neighborhoods, schools, and parks be closer to MM Dispensaries than other communities find acceptable.

In summary, Imperial Beach is too small to either allow or to properly regulate and enforce laws on a MM Dispensary. Additionally, not allowing such a facility would not deny access to MM for those who need it.

ENVIRONMENTAL IMPACT:

There is no direct environmental impact associated with this report.

FISCAL IMPACT:

None with this action.

CITY MANAGER'S RECOMMENDATION:

That the City Council either ban Medical Marijuana Dispensaries or let the existing moratorium expire on August 18, 2011, and, thereafter, rely upon the existing Zoning Code which does not permit Medical Marijuana Dispensaries within the City.



Gary Brown, City Manager

Attachments:

1. Articles from "Western City Magazine" which present reasons to allow MM facilities and reason not to allow them.
2. The Sheriffs Power Point prepared for County Supervisors.
3. Background information provided to the County Supervisors.

[Send to printer](#) [Close window](#)

Addressing the Issue of Medical Marijuana Dispensaries

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



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.

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,¹ 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.² 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."³

To further implement the CUA, the Legislature passed the Medical Marijuana Program Act (MMP) in January 2004.⁴ 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:

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

² Proposition 215 is codified at Cal. Health and Safety Code § 11362.5.

³ Cal. Health and Safety Code §11362.765(b)(1)(D).

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

[Send to printer](#) [Close window](#)

The Legal Basis for Banning Medical Marijuana Dispensaries

BY SONIA CARVALHO AND JEFF DUNN



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. 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.

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.¹

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."²

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.³ In other cases operators outright refused to comply with city laws requiring business permits.⁴ 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:

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

² *People v. Urcizeanu* (2005) 132 Cal.App.4th 747.

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

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

[Send to printer](#) [Close window](#)

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. Feldman can be reached at 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.¹ Marijuana is a controlled substance that may not be cultivated, possessed or used under federal law.² 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.³ 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;⁴ 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.⁵ 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,⁶ indicating the law contemplates collective distribution. Nothing in state law prohibits collectives from maintaining a place of business,⁷ 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.⁸

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.⁹ 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.¹⁰ 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,¹¹ Santa Cruz¹² and Malibu¹³ 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:

¹ Cal. Govt. Code section 37100.

² 21 U.S.C. Sections 801 *et seq.*

³ *Gonzalez v. Raich* (2005) 545 U.S. 1.

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

⁵ *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").

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

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

⁸ *Hochanadel* 176 Cal.App.4th at 363.

⁹ *See* Cal. Health and Safety Code Section 11362.765.

¹⁰ West Hollywood Municipal Code Chapter 5.70.

¹¹ Arcata Municipal Code Section 9.42.105.

¹² Santa Cruz Municipal Code Section 24.12.1300.

¹³ Malibu Municipal Code Section 17.66.120.

San Diego County's Medical Marijuana Ordinance

- Definitions
- How it's grown
- Safety issues
- Crime associated with collectives
- Edibles
- Collective locations
- Record keeping
- Security
- The Ordinance



“primary caregiver” is a person who (1) consistently provides care giving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.

“Qualified Patient” has the same meaning as defined by State law, including but not limited to Health & Safety Code sections 11362.7(f) and 11362.5(b).

“Medical Marijuana Collective” or “Collective” means any association or combination of Primary Caregivers and/or Qualified Patients collectively or cooperatively cultivating and or storing marijuana for medical purposes as provided in Health & Safety Code section 11362.775.

“Medical Marijuana Collective Facility” or “Collective Facility” means any location at which members of a Medical Marijuana Collective collectively or cooperatively cultivate or exchange marijuana among themselves or reimburse each other or the Medical Marijuana Collective for cultivation,

Indoor Marijuana Cultivation

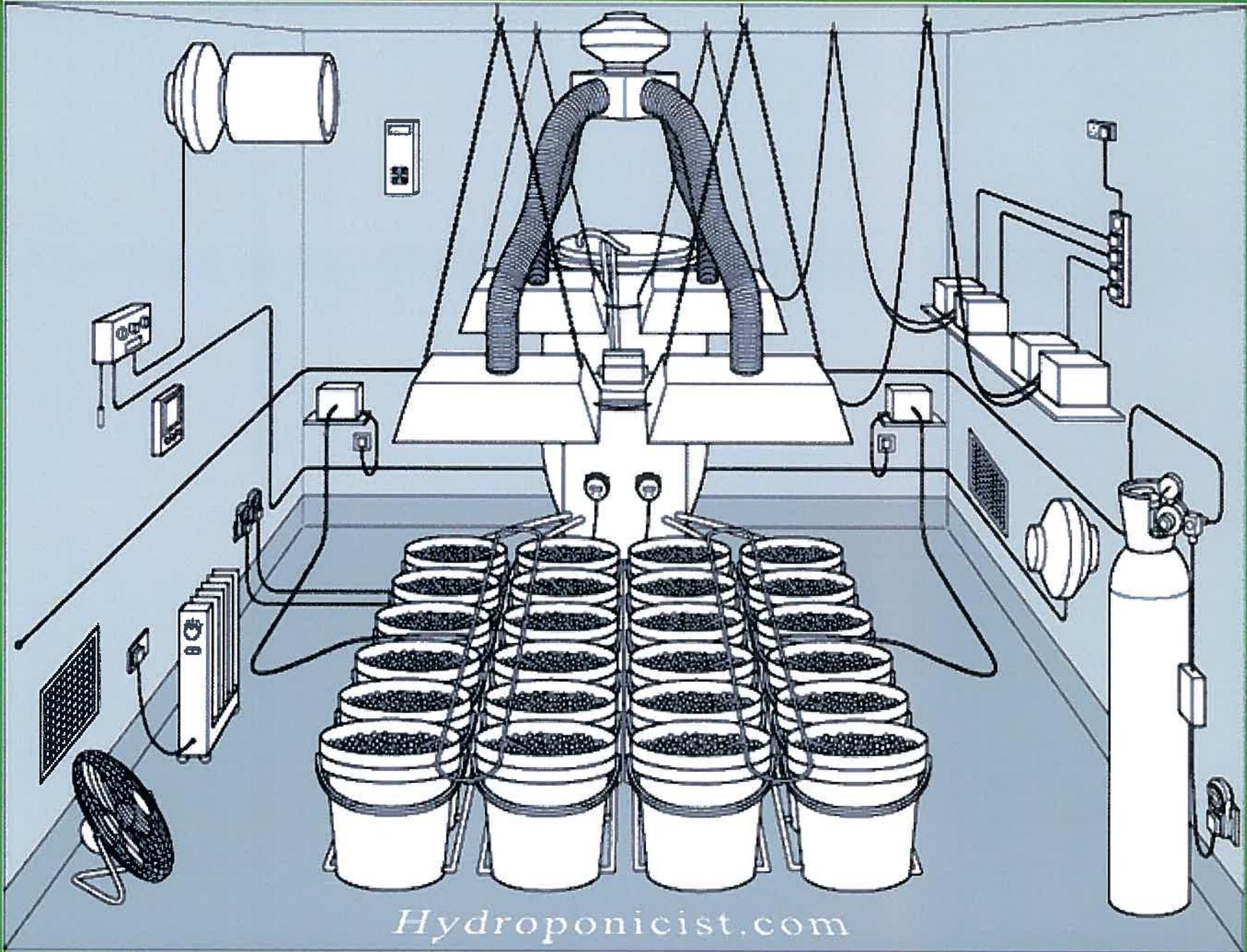


Producing high quality marijuana indoors is not as simple as planting seeds in soil and watering them.

Marijuana grown indoors utilizes a sophisticated process that involves expensive equipment, chemicals/gasses and specific time lines or stages.

Some indoor grow equipment



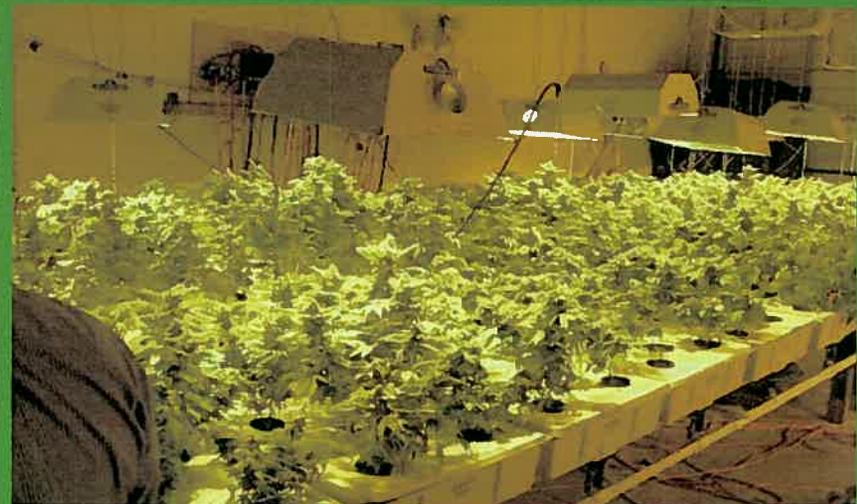


Hydroponicist.com

Indoor grows typically yield three crops a year with a ninety day harvest with each plant yielding approximately $\frac{1}{4}$ to $\frac{1}{2}$ a pound.



**The chemical responsible for the
potency of marijuana is
Tetrahydrocannabinol (THC)**



**THC content in marijuana produced in
the sixties was about 2%. The THC
content in marijuana grown indoors
today is 15 to 20%**

Current "Street" Market Values

Mexican low-grade

Pound \$300-\$340

Ounce \$75-\$100

Gram \$5-\$10

Domestic mid-grade

Pound \$750

Ounce \$150-\$200

Gram \$25

Sinsemilla high-grade

Pound \$2,500-\$6,000

Ounce \$300-\$600

1/8th ounce \$60-\$80



← Typical quality yielded from indoor cultivation

A Local Case Study

Operation San Pablo (DEA / JUDGE April 2008)

A 16 month long investigation resulted in search warrants for nine residences including four residential grow operations located in the communities of Vista, Fallbrook, Rainbow and Ramona.

6500 marijuana plants were recovered from the four grow houses.

90 day growth cycle would have yielded three harvests annually.

6500×3 (cycles) = 19500 plants $\times \frac{1}{4}$ lb. ea (low end yield) = 4875 lbs.

At \$4000 per pound (current mid level price), the operation had the potential earnings of \$19,500,000 dollars annually.

A bypassed electrical meter resulted in the theft of \$7000 a month of electricity at the Ramona location alone.

At another location, SDG&E replaced several transformers that had blown as a result of the grow operation.

Hazards Related To Indoor Marijuana Grow Operations

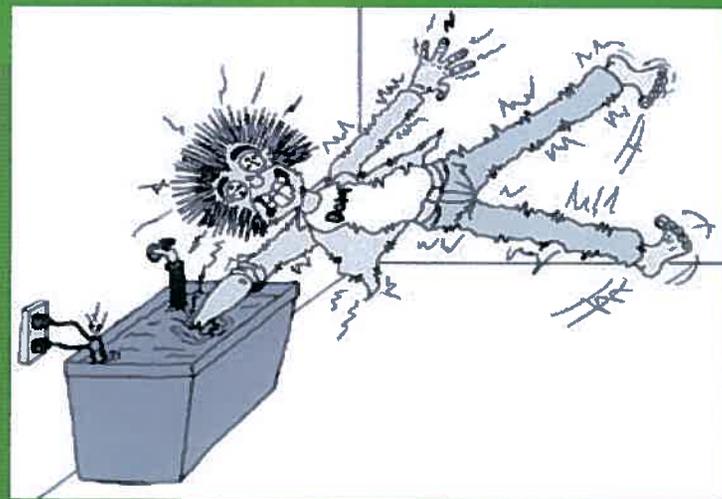


There are many hazards associated with indoor marijuana grow operations that could present a safety issue for collective members, police and fire rescue personnel

Electrical

- Grow operations can use up to ten times the normal electrical consumption of a similar sized structure.
- Illegal power taps or bypassed meters.
- Hydroponic growing combines two incompatibles, water and electricity

Information source "Response hazards at marijuana grow houses" Author: Michael Lee



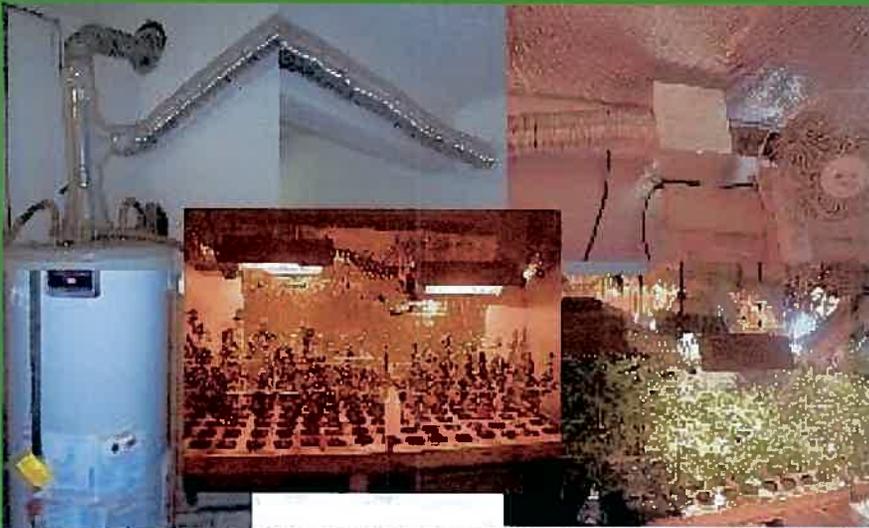
Atmospheric

- Oxygen deficient atmosphere. Oxygen levels below 19.5% are dangerous. Carbon Dioxide is often artificially introduced to the indoor grow to promote plant growth.

This is accomplished with carbon dioxide filled tanks or by burning propane which creates carbon dioxide.

Information source "Response hazards at marijuana grow houses"

Author: Michael Lee



Hot water heater CO2 generator for large grow op

Internet
instructions
for creating
CO2 with a
water heater.

use the exhaust gas from a natural gas hot water heater to enrich your growing area with co2. place a "T" in the exhaust line exiting the top of the heater. then ran a 4" metal duct (not that flimsy 4" dryer duct) into your grow room. Once inside its continued to a bathroom exhaust fan (\$14.00 at Loews) I built into a box and attached to the wall. The exit side is a 3" duct fitting that I attached a 90 degree elbow to it and directed the flow of exhaust gas (CO2) behind a 16" oscilating fan mounted close to the ceiling. for complete co2 saturation.I had to dial my generator in with a timer.the fan that pulls the co2 into the room is doing so mostly from the pilot light in the water heater which burns a steady BLUE flame which means mostly co2 and very little co. The ppm on both the co2 and co spike when the water heater is heating up the tank like when someone is takeing a shower and levels back out when the room runs thru a venting cycle. it keeps a constant 1500 -1900 ppm with lights on by setting my timer at 15 min on and 30 min off. I also installed a (CO) Carbon Monoxide alarm To be on the safe side, if I plan on being in the room I run a manual vent cycle for 10 min before i go in for safty

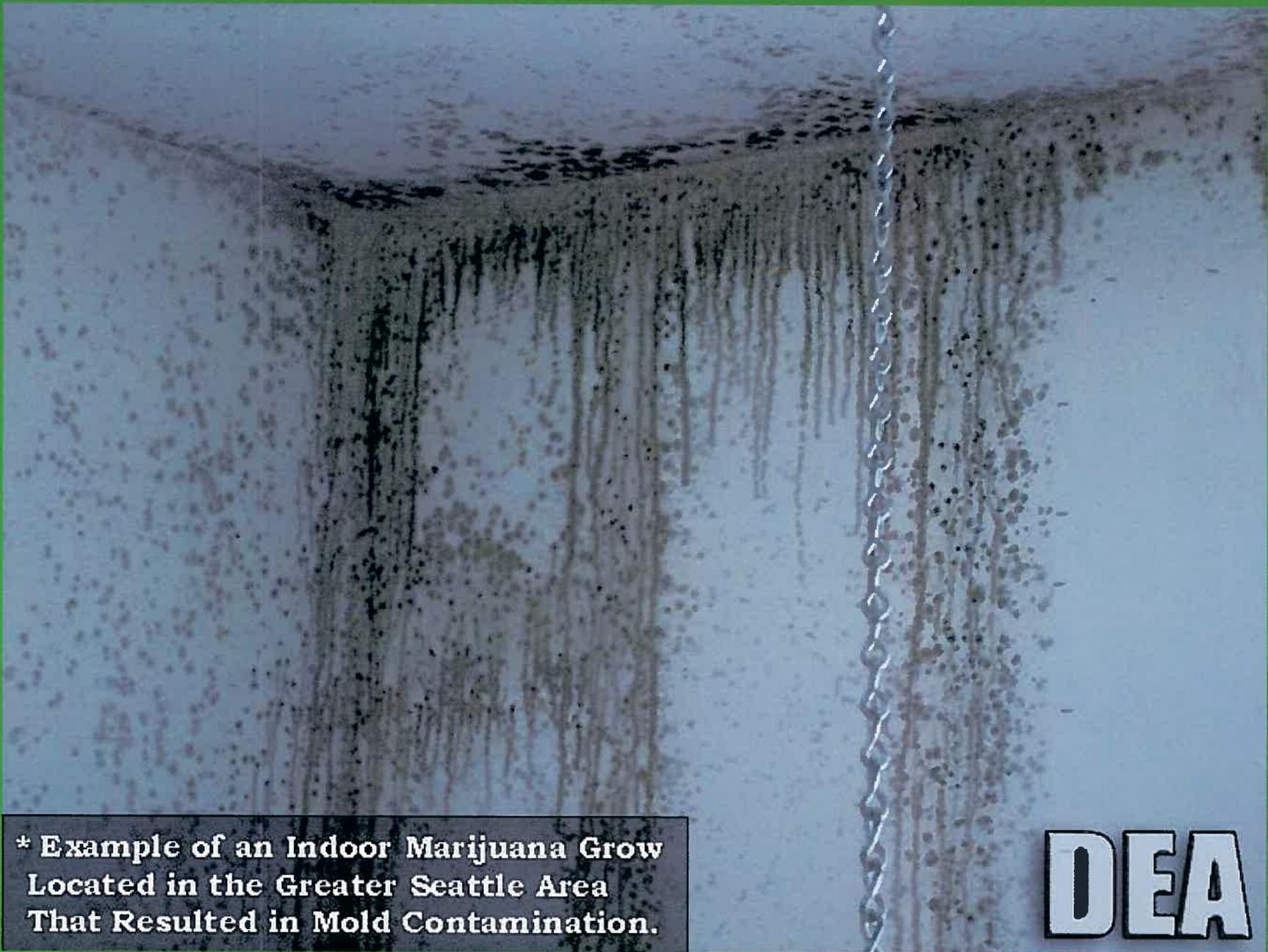
This grower
admits the
dangers!

Environmental

- Due to high humidity levels, mold is a standard byproduct growing in the same area as the product. Molds present a unique health threat in that exposure can cause allergic reactions, sinus and respiratory distress and in extreme cases death.

Information source "Response hazards at marijuana grow houses"

Author: Michael Lee



*** Example of an Indoor Marijuana Grow
Located in the Greater Seattle Area
That Resulted in Mold Contamination.**

DEA

Hazmat

- Pesticides, fungicides and Fertilizers are commonly used during an indoor grow. These items are often stored and disposed of improperly, including being poured down drains and sewers.

Information source "Legal Marijuana Grows-Growing a Problem"
Author: Caoimhin P. Connell, Forensic Industrial Hygienist



UV Hazards from grow lights

- Grow lights produce massive exposures to UV light. The UV spectrum not only damages unprotected surfaces, but also, the UV light is energetic enough to break down airborne materials (such as vapors or pesticides, etc) into a soup of other unknown contaminants with unexpected and unpredictable health consequences.
- In legitimate agricultural grow operations, the UV is properly shielded pursuant to OSHA regulations and the ventilation also meets OSHA standards.

Information source "Legal Marijuana Grows-Growing a Problem"
Author: Caoimhin P. Connell, Forensic Industrial Hygienist



Reflective Mylar wall covering

Thermometer

Exhaust duct

Grow Light

Fan

Costly Damage Repairs

According to the Insurance Bureau of Canada, the average claim to repair the damage caused to a grow house is between \$60,000 and \$80,000.

To grow a marijuana crop indoors, a number of structural modifications must be made to the building to allow for venting, water and additional electrical output to handle the extra power needs of the grow. In addition to these modifications, damage from mold and moisture adds to the costs.

Fire Hazards

NBC News Story

House Fire: Blame it on the Pot

By [H. HUGHES](#)

Updated 10:41 AM PDT, Mon, Mar 30, 2009

An attic fire broke out at a home in [Mira Mesa](#) early Sunday morning. While firefighters put out the fire, [San Diego Police](#) officers made a surprising discovery -- a full-blown marijuana "garden".

The fire started just after 5 a.m. in the 11200 block of Ganesta Road in Mira Mesa. Joshua Rasmussen, 28, was asleep at the time of the fire and was woken up by firefighters. He has been arrested for growing marijuana inside the home. Over 300 plants were found inside the house, all at various growth stages.

NBC News Story

House Fire Uncovers Illegal Drug Operation

By [ARTIE OJEDA](#)

Updated 9:51 AM PDT, Mon, Oct 20, 2008

A house fire in Carlsbad was started by an illegal marijuana growing operation, according to Carlsbad police.

Investigators said a neighbor noticed a fire coming from the second story of a home on the 900 block of Alyssum Road just after 10 a.m. The occupant of the house responded, but declined to open the door, according to police.

The Carlsbad Fire department eventually put out the fire and said it was caused from an indoor marijuana grow operation. Narcotics detectives were called in and acquired a search warrant. They said they seized about 40 marijuana plants.

Pot plants seized after Chula Vista fire

BY [KRISTINA DAVIS](#), UNION-TRIBUNE STAFF WRITER

FRIDAY, APRIL 30, 2010 AT 11:17 A.M. CHULA VISTA —

Authorities are investigating an indoor marijuana growing operation after firefighters putting out a house fire Thursday night found about 80 pot plants being grown in several bedrooms of a Chula Vista home. Neighbors reported smoke and flames coming from the back of the two-story house on Pelican Point Court about 10:30 p.m. Thursday.

Firefighters from Chula Vista and [San Diego](#) were able to contain the blaze within 10 to 15 minutes, said Chula Vista Deputy Fire Chief Jim Garcia.

During an initial search of the 2,200-square foot home, firefighters discovered about 80 mid- to full-sized plants. Two residents were able to escape safely and later handed police a medical marijuana card, saying they were caregivers, Garcia said.

Narcotics officers impounded the plants and the case will be forwarded to the District Attorney's Office for review, police said.

The cause of the fire is still under investigation, but initial findings indicate an electrical problem due to the large amount of power cords running through the house to grow the pot, Garcia said.

Damage to the structure was estimated at about \$50,000.

Crime associated with medical marijuana dispensaries

- **Under reported if reported at all**
 1. **Fear of Prosecution**
 2. **“Covert Industry”**
 3. **Giving industry a bad name**
- **Crimes related to dispensaries may not be associated or recorded as such. (statistical gathering)**

San Francisco Experience

**Crimes that occurred at, or in close proximity to,
San Francisco's Dispensaries (Jan06/Feb07)**

- **3 homicides 2 attempted homicides**
- **6 possession of a loaded firearm**
- **1 exhibiting deadly weapon**
- **57 robberies and 27 attempted robberies**
- **98 aggravated assaults**
- **144 incidents of battery**
- **7 incidents of battery on a police officer**
- **1 forcible rape, 1 attempted rape**
- **3 sexual batteries**
- **198 Burglaries and 2 attempted burglaries**

Source Ca. Police Chiefs Association

Los Angeles Police Experience

- **200% increase in robberies,**
- **52.2% increase in burglaries,**
- **57.1% rise in aggravated assaults,**
- **130.8% rise in burglaries from autos near cannabis clubs in Los Angeles.**
- **Use of armed gang members as “security guards”***

Source LAPD Det. Dennis Packer Ret.

Organized crime activity associated with marijuana grow operations

In British Columbia Canada, outlaw motorcycle gangs and Asian street gangs are forcibly taking over grow operations in an effort to control and profit from the sale and distribution of marijuana.

Outlaw motorcycle gangs as well as the Mexican Mafia are also forcibly taking over marijuana grow operations in Los Angeles Ca.

Health and Safety issues related to Marijuana laced food products

“Edibles”

The Food and Drug Administration regularly tests foods to determine if pesticides are present in unacceptable amounts. If elevated levels are found, FDA takes corrective action.

Edibles containing marijuana sold in collectives are not regulated or inspected by the FDA because the FDA does not classify marijuana as a legitimate medical drug.

Are “Edibles” safe for consumption?

- **Who prepared these edibles?**
- **Where were they prepared?**
- **Approved/inspected preparation facility?**
- **What’s the dosage amount or potency of the product?**
- **Edibles are often packaged to resemble well known brands of candies, suckers and sodas making them easily mistaken as legitimate foods by children.**



DEA



DEA

Suckers



Sodas



Injuries from edibles

- **3/4/2010 Santa Ynez, Ca. – A female student was hospitalized after becoming ill from eating marijuana laced cookies. Another student became ill from a marijuana Loli-Pop obtained in a marijuana dispensary.**
- **3/2/2010 Denver, Co.- A ten month old toddler was hospitalized after eating marijuana laced “trail mix” found in his home. The parents were legally growing marijuana.**
- **12/4/2009 Denver, Co.- A three year old is placed in intensive care after eating marijuana cookies given to him by his Grandmother, a medical marijuana activist. (She later committed suicide before going to trial)**

California Health and Safety Codes

113980 H&S (paraphrased) All food kept for sale shall have been obtained from approved sources; shall otherwise be fully fit for human consumption; and shall conform to the applicable provisions of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875)).

114021(a)H&S Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility.

114023 H&S Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

Marijuana cook books are readily available allowing a patient or caregiver to prepare marijuana “Edibles” for consumption in their own home



Limiting Collectives to industrial areas

- Intimidation of neighboring businesses and residents in the area.
- The heavy odor of marijuana and secondary smoke permeates surrounding businesses causing loss of customers and business in commercial zones.
- Industrial buildings are better equipped to handle the modifications required and the heavy electrical usage requirements.
- Higher crime rates associated with these businesses put uninvolved citizens at risk.
- Increased risks of fire and hazmat incidents.

There are currently many locations to obtain Medical Marijuana in cities located within San Diego County

Canorml.org, a website dedicated to “Reforming California’s Medical Marijuana laws,” lists locations for more than sixty medical marijuana collectives in various cities located within San Diego County. The website also lists twenty five businesses that offer a delivery service for marijuana.

Herbfolks.org lists ten additional sites located within San Diego County and there are many more.

weedmaps.com has interactive maps with locations and contact information for dispensaries throughout San Diego County

The screenshot displays the WeedMaps.com website in a Windows Internet Explorer browser window. The browser's address bar shows the URL: http://legalmarijuanadisensary.com/index.php?option=com_jreviews&Itemid=117&url=Los-Angeles-Dispensaries/california-. The website header features the WeedMaps.com logo with the tagline "Find Your Bud" and a navigation menu with links for "Dispensary Directory", "Featured", "Community", "TXT Coupons", and "App!". A search bar is located in the top right corner. Below the navigation, there are tabs for different regions: "Los Angeles", "Orange County", "San Diego", "Northern CA", "Colorado", "Inland Empire", and "Other States". The main content area shows a map titled "Cannabis Clubs near San Diego, CA" with several purple location markers. The map includes street names like "Mission Valley Fwy", "Adams Ave", and "El Cajon Blvd". A search bar above the map contains the text "Dispensary Zip City State" and a "Go!" button. On the right side of the map, there are map controls for "Map", "Satellite", and "Hybrid". The bottom of the browser window shows the Windows taskbar with the start button and several open applications, including "Inbox - Microsof...", "My Documents", "Microsoft Power...", and "Medical Marijua...". The system clock in the bottom right corner indicates the time is 1:02 PM.

Medical Marijuana Collectives will be included as one of the many Sheriff's regulated activities. Other Sheriff's regulated activities include:

Amusement Establishments
Amusement ride/Go-Cart centers
Entertainment Establishments
Bath Houses
Carnivals/Circuses
Firearms Dealers
Junk Yards
Pawnbrokers
Massage Establishments
Taxicabs
Explosives / Fireworks

Each of these businesses has some record keeping requirements. For example, personal information is required in order to sell property to a pawnbroker.

These records of sale (Pawn slips) are provided to the local Police/Sheriff's Dept. daily and are kept on file at the business for a period of two years.

These businesses and their transaction records are also required to be open to inspection by the Sheriff or his designee during reasonable business hours.

PAWNBROKER/SECONDHAND DEALER REPORT
 WHITE - COP/LEW ENFORCEMENT | YELLOW - COP/PINK DEALER
 JIR 123 (7/88)

PLEASE PRINT CLEARLY

C H I S I S T E R I S M E R	LAST NAME										FIRST NAME										MIDDLE NAME									
	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	TRANSACTION DATE			MO	DAY	YR	BUY	COMB	TRADE	AMOUNT														
	DRIVER'S LIC. NO. OR PASSPORT LIC. STATE										DATE OF ISSUE										YR. OF EXP.									
S T O R E	LICENCE NUMBER										POLICE DIVISION										ADDRESS / CITY / STATE									
	NAME										MODEL										SERIAL NO.									
	PROPERTY DESCRIPTION (One item only, Gun, Coin, watch, etc)										CHECK ONE										CHECK ONE									
I T E M	ARTICLE										BRAND NAME										SERIAL NO.									
	PROPERTY DESCRIPTION (One item only, Gun, Coin, watch, etc)										HANDGUN (PISTOL)										REVOLVER									
	PROPERTY DESCRIPTION (One item only, Gun, Coin, watch, etc)										S&W AUTOMATIC										S&W AUTOMATIC									

CUSTOMER'S SIGNATURE I certify under penalty of perjury that to my knowledge and belief the information shown is true and complete and I am the owner, or have the authority of the owner, to sell or pledge the property.

STORE PERSON'S SIGNATURE

CUSTOMER'S RIGHT THUMB PRINT REQUIRED ON BACK

Name, physical description date of birth and address of seller

Dealer / Store information

Item description

Thumbprint

Seller's signature

JUNK/RECYCLERS DEALER REPORT

PLEASE PRINT CLEARLY

WHITE - STATION | YELLOW - DEALER

LAST NAME										FIRST NAME										MIDDLE NAME									
SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	TRANSACTION DATE			MO	DAY	YR	BUY	COMB	TRADE	AMOUNT														
DRIVER'S LIC. NO. OR PASSPORT LIC. STATE										DATE OF ISSUE										YR. OF EXP.									
ADDRESS / CITY / STATE										VEHICLE MAKE, MODEL, PLATE #, STATE										HOW ACQUIRED									
NAME										ADDRESS										ARTICLE / SERIAL #									
PROPERTY DESCRIPTION (MANUFACTURER'S NAME, GRAINS & MODEL #, TP PL, SZL, COLOR)										THUMB PRINT										CUSTOMER'S SIGNATURE									

CUSTOMER'S SIGNATURE I certify under penalty of perjury that to my knowledge and belief the information shown is true and complete and I am the owner, or have the authority of the owner, to sell the property.

Sheriff's proposed "Record of transaction" form for a Collective.

**MEDICAL MARIJUANA COLLECTIVE
RECORD OF TRANSACTION**

Pursuant to San Diego County Code of Regulatory Ordinance section 21.2505(c)(7)

Please Print Legibly (use black or blue ink pen)

Transaction Date _____ [Pick Up [Delivery

Membership Status: [Qualified Patient [Primary Caregiver

Last Name	First Name	Middle Name
Address	City	State
Driver's License Number	State Issued	Phone Number

Collective Member (Source of Marijuana)

Brand/Grade of Marijuana	Quantity	\$ Total Monetary Cost
--------------------------	----------	------------------------

Payment Type: [Cash [Check-ATM Card [Money Order [Credit Card

X _____
CUSTOMER'S SIGNATURE I certify under penalty of perjury that to my knowledge and belief the information above is true and complete and I am purchasing said product for my own personal use or for the purchase of a qualified patient under my primary care

X _____
STORE PERSON'S SIGNATURE

These records are only required to be maintained at the collective and available for inspection by law enforcement within seven days of the request.

Some collectives are also using Membership Agreements

To qualify for membership at “Socal Wellness,” a dispensary located in North San Diego County, you must provide:

Name, Address, Date of birth

Valid current California photo identification

Valid current Doctor’s recommendation

Must agree to terms and complete a membership application form with a signature

**SO CAL WELLNESS CENTER COOPERATIVE, INC.
MEMBERSHIP AGREEMENT**

General Information

Member Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

CA Driver's License or State ID Number: _____ Expiration: _____

Date of Birth: _____ Phone Number: () _____

E-mail Address: _____

Medicinal Marijuana ID Card Information

(If you already have a medicinal marijuana ID card issued by a county health department or other agency pursuant to California Health & Safety Code §11356.7, *et seq.* (SB-420, 2003).)

Card Issued By: _____

Card ID Number: _____ Issue Date: _____ Expiration: _____

Membership Agreement Terms

- I certify under penalty of perjury that the information provided above is true and accurate, and I am not seeking membership for any fraudulent purpose.
- I am a **qualified patient** or **primary caregiver** as defined under California law, and
 - (1) I have obtained a recommendation or approval from a physician currently licensed to practice medicine in the state of California to use medicinal marijuana to treat a serious illness; or
 - (2) I have been designated as the primary caregiver by a qualified patient to provide for that patient's health and well-being.
- I will not distribute medicine received from So Cal Wellness Center Cooperative, Inc. to any other person who is not a member of So Cal Wellness Center Cooperative, Inc.
- I will not use the medicinal marijuana obtained from So Cal Wellness Center Cooperative, Inc. for non-medical purposes.
- I authorize my recommending physician to verify his or her recommendation or approval for the use of medicinal marijuana.
- I authorize So Cal Wellness Center and its members to process, store, possess, transport and dispense medicinal marijuana for my medical needs.
- I have read and understand the facilities rules and guidelines and consent to joining this cooperative.

X _____ Date: _____
Member Signature

This Section for Staff Use Only

Doctor's Name: _____ Phone: _____

Recommendation Dated: _____ Expiration Date: _____

Recommendation Verification from Physician's Office by: _____

Date and Time of Verification: _____

So Cal Wellness Center Database ID Number: _____

Staff Signature: _____ Date: _____

San Diego County ordinance record keeping requirements

- **Roster of Qualified Patient collective members**
- **Roster of designated Primary Caregivers**
- **Records of all transactions involving money and/or marijuana**
- **Records of source of marijuana on premise**
- **Marijuana labeled with source information**
- **Marijuana labeled with Cost and Weight**
- **Must allow inspection of Collective and grow site (Source) by Law Enforcement**

Security Requirements

- 24hr. Monitored alarm system
- Closed circuit video monitoring/recording
- Vandal resistant window glazing or bars
- Secure roof hatches or sky-lights
- Sufficient exterior lighting per SDCC 51.201-209
- Fire suppression system
- Security hardware for doors
- Operating hours 8:00am to 8:00pm 7 days
- A licensed uniformed security guard on-site

These provisions do not apply to a collective operated by a qualified patient where the amount of marijuana at no times exceeds 1.5 times the amount allowed by state law for a single qualified patient, or a collective operated by a qualified care giver where only cultivation occurs and no exchange of marijuana or reimbursements for marijuana occur.

The safety of all citizens of San Diego County is the responsibility of the Sheriff and the Board of Supervisors.

The regulations and requirements imposed on Medical Marijuana Collectives are meant to protect collective members as well as citizens who are impacted by the location and operation of collectives.

San Diego County Sheriff's Department Mission Statement

**We provide the highest
quality public safety
service in an effort to
make San Diego the safest
urban county in the nation.**

**Created By Detectives Steven Brewer and Michael Helms of the San Diego
County Sheriff's Department Licensing division**

ATTACHMENT: A

Medical Marijuana Collective Facilities Ordinance

ORDINANCE NO. _____ (N.S)**AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE TO ADD
TITLE 2, DIVISION 1, CHAPTER 25 ADOPTING REGULATIONS
RELATING TO MEDICAL MARIJUANA COLLECTIVE FACILITIES**

The Board of Supervisors of the County of San Diego, State of California, ordains as follows:

Section 1.

Title 2, Division 1 of the San Diego County Code is amended to add Chapter 25, as follows:

CHAPTER 25: MEDICAL MARIJUANA**Section 21.2501. Legislative Findings And Intent**

(a) On November 5, 1996, California voters approved Proposition 215, The Compassionate Use Act of 1996 (“CUA”), which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation, and recognized a qualified right to the collective and cooperative cultivation of medical marijuana. The CUA’s purposes are 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” 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.” However, nothing in the CUA “shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.”

(b) On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), H&S §§ 11362.7 – 11362.83, became law. The MMPA requires the California Department of Public Health to establish and maintain a voluntary registration and identification card program, sets possession guidelines and recognizes a qualified right to the collective and cooperative cultivation of medical marijuana. The MMPA allows cities and counties to adopt and enforce rules consistent with the MMPA. In August 2008, the California Attorney General published “Guidelines For The Security And Non-Diversion Of Marijuana Grown For Medical Use.” That document provides counties and cities with California

Department of Justice guidance on the laws governing medical marijuana and preventing diversion of marijuana to illegal non-medical purposes and illicit markets.

(c) The CUA and MMPA contemplate a closed circuit of cultivation, expense-sharing and consumption by qualified patients and primary caregivers with no sales or purchases involving persons outside the collective or cooperative organization.

(d) In many communities in which so-called medical marijuana “dispensaries” have been established, law enforcement agencies have documented the serious and adverse impacts associated with such dispensaries. These communities and the media have reported increased crime, including burglaries, robberies, violence, illegal sales of marijuana to and use of marijuana by minors and others without medical need in the areas immediately surrounding such medical marijuana dispensaries. Other negative secondary effects include the smoking of marijuana in public areas and adverse impacts on neighboring businesses (including odor complaints). The County of San Diego could reasonably anticipate experiencing similar adverse impacts and effects from any marijuana dispensaries established in the unincorporated county.

(e) In July 2009, the County of San Diego implemented a Medical Marijuana Identification Card program through its Health and Human Services Agency and in compliance with the requirements of the MMPA. Section 252 of the San Diego County Administrative Code became effective August 20, 2009, establishing the fees for obtaining a Medical Marijuana Identification Card from the County of San Diego.

(f) Additionally, a number of sources, including the United States Department of Justice’s California Medical Marijuana website [which contains various documents and reports related to issues surrounding marijuana use (<http://www.usdoj.gov/dea/ongoing/legalization.html>)] and the “White Paper on Marijuana Dispensaries” published by the California Police Chiefs Association’s Task Force on Marijuana Dispensaries (April 22, 2009), have concluded that the establishment of marijuana dispensaries can lead to an increase in crime. Among the crimes cited as typical examples are burglaries, robberies, sales of illegal drugs in the areas immediately surrounding such dispensaries, as well as other public nuisances such as loitering, smoking marijuana in public places, sales to minors and driving while under the influence of marijuana. The Board of Supervisors finds that these data and conclusions justify the implementation of the regulatory and safety measures included in this ordinance.

(g) It is intent of the Board of Supervisors to protect the citizens of the County of San Diego and promote their general welfare and safety by ensuring that marijuana is not diverted for illegal purposes or to illicit markets. It is the Board's further intent that medical marijuana be limited to authorized legal use by San Diego County residents who are qualified patients as defined by State law and who suffer from one or more of the following serious medical conditions: AIDS; anorexia; arthritis; cachexia; cancer; chronic pain; glaucoma; migraine; seizures; severe nausea; persistent muscle spasms; any other chronic or persistent medical condition that either limits their ability to conduct one or more major life activity as defined by the American Disability Act of 1990 or may cause harm if not alleviated. It is the further intent of the Board to ensure that only qualified medical marijuana patients and primary caregivers, as defined by State law, associate within the County in order to collectively or cooperatively cultivate marijuana for medical purposes. This Chapter is not intended to apply to personal, individual cultivation and use for legitimate medical purposes as contemplated by the CUA and the MMPA.

Section 21.2502 Definitions

(a) "Primary Care Giver" has the same meaning as defined by State statutes, including but not limited to Health & Safety Code sections 11362.5(e) and 11362.7(d). As explained in *People v. Mentch* (2008) 45 Cal.4th 274, a "primary caregiver" is a person who (1) consistently provides caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.

(b) "Qualified Patient" has the same meaning as defined by State law, including but not limited to Health & Safety Code sections 11362.7(f) and 11362.5(b).

(c) "Medical Marijuana Collective" or "Collective" means any association or combination of Primary Caregivers and/or Qualified Patients collectively or cooperatively cultivating and/or storing marijuana for medical purposes as provided in Health & Safety Code section 11362.775.

(d) "Medical Marijuana Collective Facility" or "Collective Facility" means any location at which members of a Medical Marijuana Collective collectively or cooperatively cultivate or exchange marijuana among themselves or reimburse each other or the Medical Marijuana Collective for cultivation, overhead costs and operating expenses. "Medical Marijuana Collective Facility" or "Collective Facility" does not mean or include the following facilities licensed pursuant to the following provisions of Division 2 of the Health and Safety Code:

- (1) A clinic licensed pursuant to Chapter 1;
- (2) A health facility licensed pursuant to Chapter;
- (3) A residential care facility for persons with chronic, life-threatening illnesses licensed pursuant to Chapter 3.01;
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2; or
- (5) A residential hospice or a home health agency licensed pursuant to Chapter 8.

(e) “Marijuana” has the same meaning as defined by Health & Safety Code section 11018.

(f) “Caregiver Events” means visits, consultations, transactions, interactions or other events involving a Qualified Patient and his or her Primary Caregiver designated by the Qualified Patient and his or her Primary Caregiver to demonstrate that the Primary Caregiver meets the requirements of state law, including but not limited to Health & Safety Code section 11362.5(e), other relevant statutes and court decisions.

(g) “Responsible Persons” means those members of the Collective who shall be jointly and severally responsible for operating the Collective Facility in compliance with State law and this Ordinance.

(h) “Applicant” or “Applicants” means those persons who are completing and executing the Application for a Medical Marijuana Collective Facility Operating Compliance Certificate (“Operating Certificate”).

Section 21.2503 Operating Certificate Required; Applications

(a) A Collective may only operate a Collective Facility in the unincorporated area of San Diego County if a valid Medical Marijuana Collective Facility Operating Compliance Certificate (“Operating Certificate”) has been issued by the Sheriff’s Department to a member of the Collective.

(b) The procedure for obtaining an Operating Certificate, including appeals of denials and revocations, shall be as set forth in Chapter 1 of the County of San Diego Uniform Licensing Procedure, except as set forth in this Chapter and

in addition, shall be subject to the specific requirements and regulations set forth in this Chapter.

(c) The form of application for an Operating Certificate shall be developed by the Sheriff's Department. At a minimum, the form of application developed by the Sheriff shall require the applicant(s) to provide sufficient information deemed necessary by the Sheriff to make an initial determination that (1) the Applicant(s) will be operating a legitimate Collective Facility in compliance with State and this Ordinance, and (2) the Applicant(s) is or are the owner(s) of the property for which the Operating Certificate is sought or have the written permission of the owner(s) of the property for which the license is sought.

(d) As a condition for obtaining an Operating Certificate from the Sheriff, the Applicant must show proof that the location has been approved by the Department of Planning and Land Use, Zoning Division, and a building permit (including a tenant improvement permit) has been applied for if required by the California Building Code.

(e) The form of application, which upon completion shall be signed by the Applicant(s), shall also require the Applicant(s), at a minimum, to make the following express representations:

(1) That no activities prohibited by State law will occur on or at the Collective Facility with the knowledge of the Responsible Person(s).

(2) That the Collective Facility, the Collective and its members will comply with all provisions of this Chapter and State law pertaining to medical marijuana.

(f) An Operating Certificate issued pursuant to this section shall be valid only for the address for which it was issued.

(g) Section 21.108(c) of the County of San Diego Uniform Licensing Procedure shall not apply to the issuance of Operating Certificates for Collective Facilities.

(h) The Applicant(s) shall provide to the Sheriff along with a completed application and fee for the Operating Certificate, evidence that any required building permit (including a tenant improvement permit) issued by the Department of Planning and Land Use has passed final inspection and occupancy approval has been issued before the Sheriff's Operating Certificate can be effective.

(i) For purposes of facilitating the provisions of this ordinance, a Collective must have a unique identifying name that will be entered onto the application for an Operating Certificate.

(j) The fee for an Operating Certificate shall be as provided in section 21.1901 of the County Code of Regulatory Ordinances.

(k) The application for an Operating Certificate shall designate and identify one or more persons as Responsible Persons. The designated Responsible Person(s) shall include the Applicant(s).

(l) An Operating Certificate shall not be issued where a Responsible Party has a felony conviction.

Section 21.2504 Infrastructure Requirements For Collective Facilities

(a) Alarms, Closed Circuit Television.

(1) A Sheriff Department-licensed, 24-hour centrally monitored alarm system is required.

(2) Closed Circuit Television (CCTV) video monitoring shall be installed that meets the following criteria:

(A) Continuous 24-hour operation and recording with minimum archival period of 14 days.

(B) Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in interior and exterior areas where marijuana is present at any time.

(C) Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in the immediate exterior areas of doors, windows or other avenues of potential access.

(D) All CCTV recordings shall be accessible to law or code enforcement officers at all times during operating hours and otherwise upon reasonable request. All CCTV recording systems shall have the capability of producing tapes, DVDs or other removable media of recordings made by the CCTV system.

(E) To prevent tampering, the recorder shall be kept in a secure location and all recordings shall be date and time stamped.

(b) Windows.

(1) Windows and glass panes shall have vandal-resistant glazing, shatter-resistant film, glass block, or bars installed equipped with latches that may be released quickly from the inside to allow exit in the event of emergency.

(2) Windows vulnerable to intrusion by a vehicle must be protected by bollards or landscaping grade separation reasonably sufficient to prevent such intrusion.

(c) Roofs, roof hatches, sky lights, ceilings.

For buildings in which a Collective Facility is located:

(1) All means of gaining unauthorized access to the roof shall be eliminated. Exterior roof ladders shall be secured with locked ladder covers.

(2) Roof hatches and skylights shall be secured so as to prevent intrusion.

(3) Where a Collective Facility is located in a building with other tenants, the Collective Facility shall be secured against unauthorized access from other tenant spaces or common areas, including access through crawl spaces, ceiling spaces, ventilation systems or other access points concealed from the common areas.

(d) Visibility.

(1) No marijuana may be visible from any location off the property on which a Collective Facility is located.

(2) Exterior landscaping within 10 feet of any building in which a Collective Facility is located shall be free of locations which could reasonably be considered places where a person could conceal themselves considering natural or artificial illumination.

(3) Exterior building lighting and parking area lighting must be in compliance with County of San Diego Light Pollution Code (Sections 51.201-51.209 of the San Diego County Code), County of San Diego Zoning Ordinance (Sections 6322 - 6326), and California Energy Code (Title 24-Chapter 6 of the California Code of Regulations). Lighting must be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty feet.

(f) Fire suppression system: An approved automatic fire sprinkler system, designed in compliance with NFPA 13, shall be provided in buildings and portions thereof used as a Collective Facility.

(g) Parking

A Collective Facility shall conform to the requirements of Zoning Ordinance Section 6762 and shall be considered an "Office" occupancy type for purposes of that Section.

(h) Entrances, exits, doors.

(1) A Collective Facility shall have a single plainly identified primary entrance/exit site that is visible from public or common areas.

(2) Any exit or entrance that is not visible from a public or common area shall be plainly marked as an emergency exit only. Such emergency exits shall be self-closing, self-locking, equipped with an alarm and not used except in an emergency.

(3) Any aluminum door shall be fitted with steel inserts at the lock receptacles.

(4) Any outward opening doors shall be fitted with hinge stud kits, welded hinges or set-screw hinge pins.

(5) Panic exit hardware shall be "push-bar" design.

(6) Double doors shall be fitted with three-point locking hardware and push-bars consistent with fire agency regulations or requirements.

(7) All emergency exits shall be solid core doors featuring hinge-pin removable deterrence. Emergency exit doors shall have latch guards at least 12 inches in length protecting the locking bolt area. Latch guards shall be of minimum 0.125-inch thick steel, affixed to the exterior of the door with non-removable bolts, and attached so as to cover the gap between the door and the doorjamb for a minimum of six inches both above and below the area of the latch.

(8) All glass doors or doors with glass panes shall have shatter-resistant film affixed to prevent glass breakage.

(i) The provisions of this section do not apply to the following Collective Facilities:

(1) A Collective Facility operated by a Qualified Patient where the amount of marijuana at no time exceeds 1.5 times the amount allowed by state law for a single Qualified Patient under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

(2) A Collective Facility operated by a Primary Care Giver where the amount of marijuana at no time exceeds the amount allowed by state law for a single Primary Care Giver under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

Section 21.2505 Operating Requirements For Collective Facilities

(a) The hours of operation of a Collective Facility shall be no earlier than 8 a.m. and no later than 8 p.m., seven days a week.

(b) No persons under the age of eighteen are allowed at, in or on a Collective Facility, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.

(c) In order to facilitate verification that a Collective Facility is operating pursuant to State and local laws, the following records must be maintained at the Collective Facility at all times and available for inspection by the Sheriff's Department:

(1) A record identifying all current Qualified Patient members of the Collective associated with the Collective Facility. The record shall identify each Qualified Patient's designated Primary Caregiver, the name of the physician providing the recommendation for medical marijuana and shall reflect whether the recommendation is written or oral. The record shall identify the city and county of residence for each Qualified Patient and his or her Primary Caregiver.

(2) A record identifying all current Primary Caregiver members of the Collective associated with the Collective Facility, and the persons for whom they are the designated Primary Caregiver. The record will show the city and county of residence for all Qualified Patients and Primary Caregivers.

(3) A current record of Caregiver Events for each Member of the Collective associated with the Collective Facility. Such record should include, at a minimum, the dates, times, duration, participants and nature of the Caregiver Event(s). Such record shall not include information protected by Federal or State medical information privacy laws.

(4) A record identifying the source or sources of all marijuana currently on the premises of the Collective Facility or that has been on the premises during the two-year period preceding the current date. The record shall reflect the grower and the address and location of cultivation of the identified marijuana.

(5) All marijuana at the Collective Facility must at all times be physically labeled with information which, used in conjunction with the record required by section 21.2505(c)(4), will allow for ready identification of the specific Collective member who is the source of the marijuana.

(6) All marijuana at the Collective Facility must at all times be physically labeled with the monetary amount to be charged (or “price” for purposes of this subparagraph only) to a Collective member as reimbursement for cost of cultivation, overhead and operating expenses. Marijuana that is stored in bulk, and which is distributed by requested weight amount, shall be labeled with the price-per-ounce. Marijuana that is stored and distributed in fixed weight packages shall be labeled with the price and weight of the marijuana in the package.

(7) Current records of all transactions involving money and/or marijuana occurring in connection with the operation and activities of the Collective or the Collective Facility during the two-year period preceding the current date. Such records must include at a minimum the following information: (a) The names the persons involved, the person’s membership status in the Collective associated with the Collective Facility, and whether they are a Qualified Patient or a Primary Caregiver; (b) the amount of cash involved, if any, (c) the amount of marijuana involved, if any, (d) the method of payment if not by cash, and (d) if marijuana was involved, the Collective member who was source of the marijuana.

(8) An agreement, signed by each member of the Collective associated with the Collective Facility and who is a source of marijuana to the Collective Facility as identified by sections 21.2505(c)(4) and 21.2505(c)(5), that:

(A) within seven days of request by the Sheriff’s Department, the Member will produce for inspection by law enforcement a record, current to within 48 hours, of costs of cultivation, overhead and operating expenses; and

(B) the location of the cultivation of the marijuana supplied by the Member shall be subject to inspection for physical verification by appropriate law enforcement or fire agencies.

The form of the agreement required by this subdivision shall be determined by the Sheriff's Department, and shall require as a minimum the full name, home address, cultivation site address, home and emergency telephone numbers and the agreement required by this section.

(9) A record showing the identification of the Responsible Persons for the Collective by name, home address and telephone number.

(10) A clearly-visible, posted document identifying the names of the Responsible Persons and their emergency contact telephone numbers.

(d) The total quantity of marijuana located at any Collective Facility shall not exceed the maximum quantity limits set by state law, as established by statute and court decisions, in relation to the number of Qualified Patients and Primary Caregivers that are members of the Collective.

(e) All marijuana at a Collective Facility must have been cultivated at that Collective Facility or have as its source a member or members of the Collective with which the Collective Facility is associated.

(f) Only marijuana as herein defined is allowed at the Collective Facility. No food or drink containing marijuana is allowed.

(g) No smoking or any other consumption or ingestion of marijuana is allowed at a Collective Facility.

(h) Only persons who are members of the Collective that is associated with a Collective Facility shall collectively or cooperatively cultivate, store or exchange marijuana among themselves, or reimburse each other or the Medical Marijuana Collective for cultivation, overhead costs and operating expenses, at the Collective Facility.

(i) Collective Facilities shall be available for inspection by the Sheriff, the Director of Planning and Land Use, the fire authority having jurisdiction or their respective authorized representatives, at all times during operating hours and upon reasonable notice during non-operating hours.

(j) A Collective Facility shall have on its premises, posted in a prominent location, a copy of its Operating Certificate and a document that provides the names, home addresses, home telephone numbers and 24-hour emergency telephone numbers of its operators.

(k) A licensed, uniformed security guard shall be present at a Collective Facility at all times during Hours of Operation pursuant to section 21.2505(a).

(l) The provisions of this section do not apply to the following Collective Facilities:

(1) A Collective Facility operated by a Qualified Patient where the amount of marijuana at no time exceeds 1.5 times the amount allowed by state law for a single Qualified Patient under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

(2) A Collective Facility operated by a Primary Care Giver where the amount of marijuana at no time exceeds the amount allowed by state law for a single Primary Care Giver under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

Section 21.2506 Facility Limits; Naming

(a) A Collective may operate only one Collective Facility where members of the Collective exchange marijuana among themselves or reimburse each other or the Collective for cultivation, overhead costs and operating expenses. A Collective may operate additional Collective Facilities where only cultivation occurs, all of which must meet the requirements of this ordinance except as expressly provided by this ordinance.

(b) A Collective must have a unique identifying name, identified on the Operating Certificate Application, for purposes of tracking membership and facilities

Section 21.2507 Administrative and Civil Penalties

(a) An Operating Certificate may be revoked for any violation of state law or this Chapter, or for failure to comply with conditions listed on the Operating Certificate. Revocation proceedings, hearings and appeals shall be conducted as set forth in Chapter 1 of the County of San Diego Uniform Licensing Procedure. Administrative civil penalties shall be assessed pursuant to sections 18.201 et seq. of this Code or successor or amended administrative civil penalty provisions as may be adopted.

(b) In a civil action filed by the County to enforce provisions of this Ordinance, a court may assess a maximum civil penalty of \$2500 per violation for each day during which any violation of any provision of this Ordinance is committed, continued, permitted or maintained by such person(s). As part of said civil action, a court may also assess a maximum civil penalty of \$6000 for each

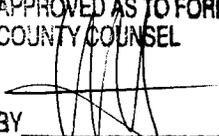
day any person intentionally violates an injunction prohibiting the violation of any provision of this Ordinance.

(c) Any violation of this Chapter may also be deemed a public nuisance and may be enforced by any remedy available to the County for abatement of public nuisances.

Section 21.2508 Severability.

(a) If any part of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY 

SENIOR DEPUTY

ATTACHMENT: B

Zoning Ordinance Amendment – Regulating Medical Marijuana Collectives

ORDINANCE NO. _____ (N.S.)

**AN ORDINANCE AMENDING THE ZONING ORDINANCE REGARDING
MEDICAL MARIJUANA COLLECTIVE FACILITIES**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The purpose and intent of this ordinance are stated at paragraph a of new Zoning Ordinance Section 6835 below.

Section 2. Section 6935 is hereby added to the Zoning Ordinance, to read as follows:

6935 MEDICAL MARIJUANA COLLECTIVE FACILITIES

- a. **Purpose and Intent.** It is the purpose of this section to implement the Compassionate Use Act of 1996 (Health & Safety Code Section 11362.5) and the Medical Marijuana Program (Health & Safety Code Sections 11362.7 et seq.) by establishing reasonable and uniform zoning regulations of medical marijuana collective facilities which, in combination with licensing requirements contained in the San Diego County Code, will allow qualified patients and primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes, and at the same time protect the public health, safety and welfare of communities, within the unincorporated area of San Diego County. It is the intent of this section that the regulations be utilized to preserve the character of neighborhoods and property values and to deter the spread of crime and prevent problems of blight, deterioration, and public safety which often accompany and are brought about by the operation of medical marijuana collective facilities.
- b. **Definition.** The terms "Medical Marijuana Collective Facility" or "Collective Facility" shall have the meanings given in San Diego County Code Section 21.2502(d).
- c. **Use Regulations Where Collective Facilities Are Allowed.** A Collective Facility may only be located upon property to which the M50, M52, M54, M56 or M58 Use Regulations apply, and within those areas, the separation restrictions of paragraph d below shall apply.
- d. **Separation Requirements For Collective Facilities.** A Collective Facility shall not be allowed or permitted upon any parcel, any portion of which would be, at the time of establishment of the Collective Facility, within any of the following:
 1. 500 feet from a parcel to which a residential Use Regulation applies;
 2. 600 feet from a parcel containing a school, playground, park, church, recreation center, or youth center; or
 3. 1000 feet from a parcel on which another Collective Facility has been established.

The distance between a Collective Facility and the parcels containing the uses listed in paragraph d above shall be measured in a straight line, without regard for intervening structures, from any parcel line of the real property on which the Collective Facility is located, to the nearest point on a parcel line of the real property on which any portion of the facility, building, or structure in which the above listed use occurs or is located.

- e. **Openness of Premises.** A Collective Facility shall be designed and constructed such that no area or portion where marijuana is cultivated or stored is visible from the exterior; however, the entrance shall be fully visible from the public street or building frontage.
- f. **Operating License Required.** Pursuant to San Diego County Code Section 21.2503, a Medical Marijuana Collective Facility Operating Compliance Certificate is required for the operation of a Collective Facility.
- g. **Premises Requirements.**
 - 1. **Signage.** Exterior signage shall conform to the requirements of Section 6250 et al.
 - 2. **Parking.** A Collective Facility shall conform to the requirements of Section 6762 and shall be considered an "Office" occupancy type for purposes of that Section.
 - 3. **Physical Appearance.** The exterior appearance of the structure shall remain compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration or substantial diminishment or impairment or property values within the immediate area.
- h. **Nonconforming Uses.** Notwithstanding Section 6852, a Collective Facility which was lawfully established before August 1, 2010 shall cease operations no later than August 1, 2013. The Collective Facility may apply for one six-month extension of this period. The Director may grant that extension if upon determining that the operator would be subjected to unreasonable financial hardship if forced to cease operations, considering (1) the availability of alternative complying locations; (2) the term of any applicable lease for the premises and whether it may be modified or terminated; (3) the non-recoverable costs of any improvements that would only be of use to the Collective Facility; (4) the profits which have been received during the period from August 1, 2010 to August 1, 2013, and (5) the potential for other conforming uses to locate on the site.

Any nonconforming medical marijuana collective facility shall not be expanded, enlarged, extended or altered except that the use may be changed to a conforming use.

Section 3. This ordinance shall take effect and be in force thirty days after the date of its passage, and before the expiration of fifteen days after its passage it or a summary thereof shall be published once with the names of the members voting for and against the same in _____, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY _____

SENIOR DEPUTY

ATTACHMENT: C

Zoning Ordinance Amendment – Prohibiting Illegal Non-Medical Marijuana Dispensaries

ORDINANCE NO. _____ (N.S.)

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
TO PROHIBIT NON-MEDICAL MARIJUANA DISPENSARIES
WITHIN THE UNINCORPORATED AREA
OF THE COUNTY OF SAN DIEGO**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines as follows: Use or possession of marijuana for non-medical purposes, which is not authorized by state law, is a violation of federal and state law. Facilities which dispense marijuana without authorization under state law have proven to have serious harmful effects on the neighborhoods in which they are located, to owners of property in such neighborhoods, and to citizens living, visiting, shopping, conducting business or otherwise present in the area. Such effects are due to such factors as the illegal nature of the activity, the presence of large quantities of marijuana at the dispensaries, the presence of large amounts of cash, the presence of weapons, and other factors. Harmful effects at the dispensaries, which are not authorized under state law, and the surrounding area have included an increase in burglaries, robberies, illegal sales of drugs, use or possession of marijuana by unauthorized persons, attacks on persons entering or leaving the premises, loitering, smoking marijuana in public places, and driving while under the influence of marijuana. It is the intent of this ordinance to protect neighborhoods in the unincorporated area by prohibiting facilities which dispense marijuana for non-medical purposes without authorization under state law throughout the unincorporated area of the County of San Diego.

Section 2. Section 1110 DEFINITIONS (M) of the Zoning Ordinance is hereby amended to add the term "Marijuana Dispensary - Non-Medical (Not Authorized Under State Law)", inserted into the appropriate alphabetical location, to read as follows:

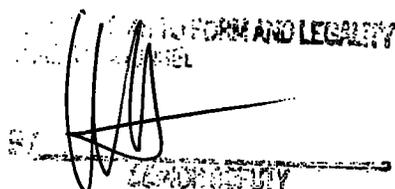
Marijuana Dispensary - Non-Medical (Not Authorized Under State Law): Any store, office, business, building, property or other facility in or from which marijuana is sold, given, traded, supplied, bartered, consumed, raised, processed, stored, used, cultivated, possessed, or transported by any person other than a person authorized to possess or cultivate marijuana for the personal medical purposes of the qualified patient, pursuant to the provisions of the Compassionate Use Act of 1996 (Health and Safety Code Sections 11362.5 and following) and the Medical Marijuana Program Act (Health and Safety Code Sections 11362.7-11362.83). Persons authorized to possess or cultivate marijuana for the personal medical purposes of the qualified patient include persons, who under state law, are: (i) qualified patients, (ii) primary caregivers of qualified patients, or (iii) such patients and caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes.

Section 3. Section 6976 is hereby added to the Zoning Ordinance, to read as follows:

6976 MARIJUANA DISPENSARIES – NON-MEDICAL (NOT AUTHORIZED UNDER STATE LAW)

No person shall cause or permit the establishment, operation, enlargement or transfer of ownership of a dispensary of marijuana for non-medical purposes, meeting the definition "Marijuana Dispensary - Non-Medical (Not Authorized Under State Law)" in Section 1110. This prohibition shall apply throughout all use regulations.

Section 4. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Commerce, a newspaper of general circulation published in the County of San Diego.

A handwritten signature in black ink is written over a rectangular official stamp. The stamp contains the text "INFORM AND LEGALITY" at the top and "ZONING DEPARTMENT" at the bottom. The signature is a stylized, cursive-like scribble.

ATTACHMENT: H

Attorney General Guidelines

EDMUND G. BROWN JR.
Attorney General



DEPARTMENT OF JUSTICE
State of California

**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
 OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted 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,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members’ medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

ATTACHMENT: I

White Paper on Medical Marijuana Dispensaries

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
 Jacob Appelsmith, Office of the California Attorney General
 John Avila, California Narcotics Officers Association
 Phebe Chu, Office of San Bernardino County Counsel
 Scott Collins, Los Angeles County District Attorney's Office
 Cathy Coyne, California State Sheriffs' Association
 Lorrac Craig, Trinity County Sheriff's Department
 Jim Denney, California State Sheriffs' Association
 Thomas Dewey, California State University—Humboldt Police Department
 Dana Filkowski, Contra Costa County District Attorney's Office
 John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
 Craig Gundlach, Modesto Police Department
 John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police
Mike Kanalakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

TABLE OF CONTENTS

	<u>Pages</u>
ACKNOWLEDGMENTS	i-ii
EXECUTIVE SUMMARY	iv-vi
WHITE PAPER ON MARIJUANA DISPENSARIES	
INTRODUCTION	1
FEDERAL LAW	1-2
CALIFORNIA LAW	2-6
LAWS IN OTHER STATES	6
STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES	6-7
HOW EXISTING DISPENSARIES OPERATE	7-8
ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES	8
ANCILLARY CRIMES	8-10
OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES	11
SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE	11-14
ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS	14
POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES	14-17
LIABILITY ISSUES	18-19
A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES	19-30
PENDING LEGAL QUESTIONS	31-39
CONCLUSIONS	40
ENDNOTES	41-44
NON-LEGAL REFERENCES	45-49

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES****EXECUTIVE SUMMARY****INTRODUCTION**

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

Editor: Dennis Tilton, M.A.Ed., M.A.Lit., M.C.J., J.D.

Adjunct Professor of Criminal Justice, Political Science, & Public Administration, Upper Iowa University
 Sheriff's Legal Counsel (Retired), San Bernardino County Sheriff's Department

INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) 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. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety.**”³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions”⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year”⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, 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 completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

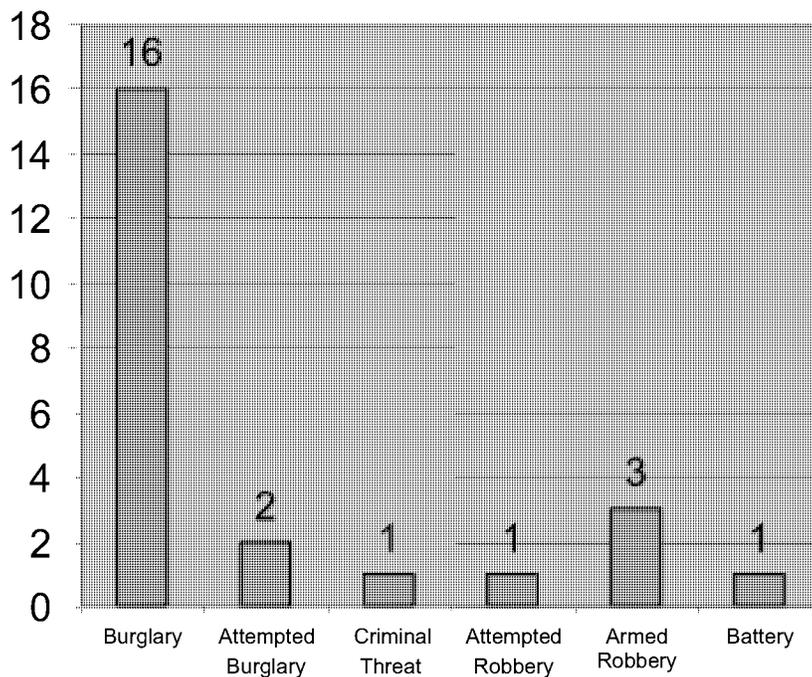
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

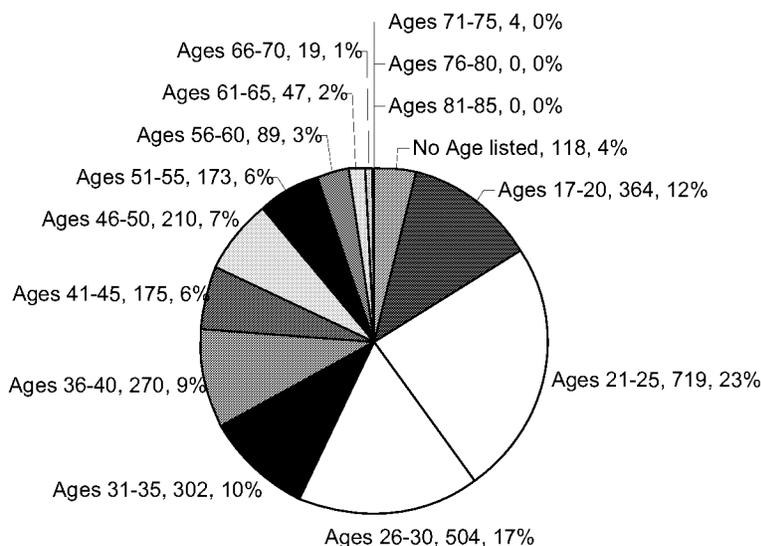
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

- ¹ U.S. Const., art. VI, cl. 2.
- ² U.S. Const., art. I, sec. 8, cl. 3.
- ³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- ⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- ⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- ⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>
- ⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- ⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- ⁹ H&S Code sec. 11362.5(a).
- ¹⁰ H&S Code sec. 11362.7 *et. seq.*
- ¹¹ H&S Code sec. 11362.7.
- ¹² H&S Code secs. 11362.71–11362.76.
- ¹³ H&S Code sec. 11362.77.
- ¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
- ¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
- ¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- ¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
- ¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- ¹⁹ *Id.* Emphasis added.
- ²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- ²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- ²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- ²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- ²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.
- ²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- ²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
- ²⁷ Israel Packel, 4-5. Italics added.
- ²⁸ H&S Code sec. 11362.7(d)(1).
- ²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
- ³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
- ³¹ *People v. Mower*, 28 Cal.4th at 476. Emphasis added.
- ³² Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>
- ³³ "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>
- ³⁴ Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

- ³⁵ Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257
- ³⁶ Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
- ³⁷ Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print
- ³⁸ Laura Clark, "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2007, available at <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- ³⁹ Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," *Santa Rosa Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at <http://www.equalrights4all.us/content/view/192/50/>
- ⁴⁰ Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
- ⁴¹ Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>
- ⁴² Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
- ⁴³ Will Bigham, "Claremont Marijuana Dispensary Burglarized," *Inland Valley Daily Bulletin*, 27 January 2007, available at http://www.dailybulletin.com/ci_5104514
- ⁴⁴ Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
- ⁴⁵ Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb>
- ⁴⁶ Ortega.
- ⁴⁷ Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
- ⁴⁸ Jeff McDonald, "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006, available at http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html
- ⁴⁹ McDonald; Beato.
- ⁵⁰ Cal. H&S Code sec. 11362.5.
- ⁵¹ Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- ⁵² McDonald.
- ⁵³ Stewart.
- ⁵⁴ Stewart.
- ⁵⁵ Stewart.
- ⁵⁶ National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at <http://www.usdoj.gov/ndic/pubs21/22486/>; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>; LAPD report information, 2007.

- ⁵⁷ Van Derbeken, *et al.*
- ⁵⁸ Kate Heneroty, "Medical marijuana indictment unsealed," *Jurist*, 24 June 2005, available at <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>; Stacy Finz, "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids," *San Francisco Chronicle*, 24 June 2005, available at <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>
- ⁵⁹ Organized Crime Behind 'Medical' Marijuana Dispensary in California," *Pushingback*. 29 September 2006, available at http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx; "Ashton.
- ⁶⁰ City of San Diego, *Crime Statistics*, 2007, available at <http://www.sandiego.gov>
- ⁶¹ National Drug Intelligence Center, *Marijuana*, January 2001, available at <http://www.usdoj.gov>
- ⁶² George Anastasia, "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade," *Chronicle of Boredom*, 18 April 2007.
- ⁶³ Will Bigham, "Houses Linked to Asian Gangs," *Inland Valley Daily Bulletin*, 23 September 2007, available at http://www.dailybulletin.com/newsci_6980682
- ⁶⁴ Bigham, 23 September 2007.
- ⁶⁵ Feds Came and Went—Now What? *Humboldt County News*, 30 June 2008, available at <http://news.humcounty.com/archives/2008/6>
- ⁶⁶ LAPD Report Number DR#060625000, 16 August 2006.
- ⁶⁷ LAPD Report Number DR#060625001, 16 August 2006.
- ⁶⁸ Tim Miller, City of Anaheim Police Department: Special Operations Division Memorandum re Marijuana Dispensary (MMD) Ban Ordinance, 25 October 2006; Johnson; Craig T. Steckler, City of Fremont Police Department; Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts, 20 June 2006.
- ⁶⁹ Stewart.
- ⁷⁰ Johnson.
- ⁷¹ Ashton.
- ⁷² "What has the U.S. DEA said about medical marijuana? " Medical Marijuana ProCon.org, 2005; "What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org., 2009, available at <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>
- ⁷³ Jim Avila, "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana," ABC News, 14 June 2007, available at <http://abcnews.go.com/print?id=3242760>
- ⁷⁴ Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at <http://cbs5.com/national/dea.raid.miami.2.712958.html>
- ⁷⁵ Anastasia.
- ⁷⁶ Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC)*, 22 May 2005, available at <http://www.mapinc.org/newstcl/v05/n823/a02.html>
- ⁷⁷ Bigham, 23 September 2007.
- ⁷⁸ Bigham, 23 September 2007.
- ⁷⁹ Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>
- ⁸⁰ Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at <http://articles.latimes.com/2008/may/31/local/me-pot31>
- ⁸¹ Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at <http://news.humcounty.com/>; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.
- ⁸² Jesse McKinley, "Marijuana Hotbed Retreats on Medicinal Use," *New York Times*, 9 June 2009, available at http://www.nytimes.com/2008/06/09/us/pot.html?_r=1&em&ex=1213329
- ⁸³ Deputies: Fire Damages Holiday Marijuana Grow Home, *tampabay.com*, 15 February 2008, available at <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>
- ⁸⁴ Don Ruane, "Grow Houses Can Impact Utility Bills, Public Safety," *News-press.com*, 12 April 2008, available at <http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>
- ⁸⁵ "DEA Raids Miami Grow House."
- ⁸⁶ Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>
- ⁸⁷ Avila.

⁸⁸ Scott Glover, "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges," *Los Angeles Times*, 6 August 2008, available at <http://articles.latimes.com/2008/aug/06/local/me-pot6>

⁸⁹ Bailey and Reiterman.

⁹⁰ Janis Ramsay, "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says," *The Barrie Advance*, 25 August 2008, available at <http://www.mapinc.org/drugnews/v08/n818/a06.html>

⁹¹ Avila.

⁹² Bailey and Reiterman.

⁹³ Steve Davis, "Grow Security," *Cannabis Culture Magazine*, 6 August 2004, available at <http://www.cannabisculture.com//articles/3441.html>

⁹⁴ Bailey and Reiterman.

⁹⁵ See *People v. Urziceanu*, 132 Cal.App.4th 747.

⁹⁶ City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.

⁹⁷ Office Consolidation: By-law 361-2004 of the City of Brampton, Ontario, Canada.

⁹⁸ Bill McCollum, "Landmark Bill Targeting Marijuana Grow Houses Becomes Law," Attorney General Bill McCollum News Release, 17 June 2008, available at

<http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>

⁹⁹ "Asian Gangs Move Grow-ops," *The Asian Pacific Post*, 27 September 2007, available at

http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html

¹⁰⁰ See Asian Gangs Move Grow-ops.

¹⁰¹ See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.

¹⁰² See, e.g., http://www.californiapolicechiefs.org/nav_files/research/ordinances.html

¹⁰³ National Drug Intelligence Center.

NON-LEGAL REFERENCES

- Abdollah, Tami, and Richard Winton. "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007. Retrieved January 8, 2009, from http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
- Allen, Heather. "Marijuana Grow Houses Flourish as Southwest Florida Market Drops." *HeraldTribune.com*, 24 July 2007. Retrieved January 9, 2009, from <http://www.heraldtribune.com/article/20070724/NEWS/707240498>
- Anastasia, George. "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade." *Chronicle of Boredom*, 18 April 2007. Retrieved January 8, 2009, from <http://www.xanga.com/tihailua/584859568/viet-gangs-on-the-rise-again.html>
- Anderson, Glenda. "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home." *Santa Rosa Press Democrat*, 19 November 2005. Retrieved January 8, 2009, from <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/>
- Anderson, Glenda. "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home." *Santa Rosa Press Democrat*, 20 November 2005. Retrieved January 8, 2009, from <http://www.equalrights4all.us/content/view/192/50/>
- Ashton, Adam. "DEA Busts Pot Store Day After Council Talk." *Modesto Bee*, 28 September 2006.
- "Asian Gangs Move Grow-ops." *The Asian Pacific Post*, 27 September 2007. Retrieved January 8, 2009, from http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html
- Avila, Jim. "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana." *ABC News*, 14 June 2007. Retrieved January 8, 2009, from <http://abcnews.go.com/print?id=3242760>
- Bailey, Eric, and Tim Reiterman. "Where Mary Jane Is the Girl Next Door." *Los Angeles Times*, 31 May 2008. Retrieved January 8, 2009, from <http://articles.latimes.com/2008/may/31/local/me-pot31>
- Baron, Ethan. "Angel Linked to Grow-op." *The Province (CNBC)*, 22 May 2005. Retrieved January 8, 2009, from <http://www.mapinc.org/newstcl/v05/n823/a02.html>

-
- Beato, Greg. "Pot clubs in peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007.
Retrieved January 8, 2009, from <http://www.reason.com/news/show/118314.html>
- Bigham, Will. "Claremont Marijuana Dispensary Burglarized." *Inland Valley Daily Bulletin*, 27 January 2007. Retrieved January 9, 2009, from http://www.dailybulletin.com/ci_5104514
- Bigham, Will. "Houses Linked to Asian Gangs." *Inland Valley Daily Bulletin*, 23 September 2007. Retrieved January 8, 2009, from http://www.dailybulletin.com/newsci_6980682
- Brown, Edmund G., Jr. *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008.
- City of Pleasant Hill. Presentation to Its Planning Commission by Planning Staff, April 24, 2007.
- City of San Diego. *Crime Statistics*, 2007. Retrieved January 9, 2009, from <http://www.sandiego.gov>
- Clark, Laura. "Breaking News: Medical Marijuana Supplier Les Crane Killed." *Ukiah Daily Journal*. 19 November 2005.
- Clark, Laura. "Les Crane Murder Investigation Continues." *Ukiah Daily Journal*. 27 November 2005.
- Clark, Laura. "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2005. Retrieved January 9, 2009, from <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- Davis, Steve. "Grow Security." *Cannabis Culture Magazine*, 6 August 2004. Retrieved January 8, 2009, from <http://www.cannabisculture.com//articles/3441.html>
- "DEA Raids Miami Grow House." CBS News, 30 April 2008. Retrieved January 8, 2009, from <http://cbs5.com/national/dea.raid.miami.2.712958.html>
- "Deputies: Fire Damages Holiday Marijuana Grow House." *tampabay.com*, 15 February 2008. Retrieved January 8, 2009, from <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>
- "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2) (February 2007).
- "Eureka House Fire the Result of You-know-what." *Humboldt County News*, 7 September 2008. Retrieved January 8, 2009, from <http://news.humcounty.com/>

“Feds Came and Went — Now What?” *Humboldt County News*, 30 June 2008. Retrieved January 8, 2009, from <http://news.humcounty.com/archives/2008/6>

Finz, Stacy. “19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids.” *San Francisco Chronicle*, 24 June 2005. Retrieved January 8, 2009, from <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>

Glover, Scott. “Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges.” *Los Angeles Times*, 6 August 2008. Retrieved January 8, 2009, from <http://www.latimes.com/news/local/la-me-pot6-2008aug06,0,516054.story>

Graham, Ricci. “Man Faces Murder Charge in Pot Robbery.” *Oakland Tribune*, 24 August 2005. Retrieved February 28, 2009 from <http://www.highbeam.com/doc/1P2-7021933.html>

Graham, Ricci. “Another Medical Marijuana Clinic Robbed.” *Oakland Tribune*, 10 September 2005. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print

Graham, Ricci. “Police Arrest Suspect in Deadly San Leandro Pot Club Robbery.” *Oakland Tribune*, 8 August 2006. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257

Heneroty, Kate. “Medical Marijuana Indictment Unsealed.” *Jurist*, 24 June 2005. Retrieved January 8, 2009, from <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>

Johnson, Kirk. “Killing Highlights Risk of Selling Marijuana, Even Legally.” *New York Times*, 13 March 2007. Retrieved January 8, 2009, from <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>

LAPD Report Information, 2007.

LAPD Report Number DR#060625000, 16 August 2006.

LAPD Report Number DR#060625001, 16 August 2006.

Lopez, Alan. “El Cerrito Moves to Ban Cannabis Clubs.” *Contra Costa Times*, 6 January 2008. Retrieved January 8, 2009, from <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>

Louey, Sandy. "Arrests Take Toll on Local Gang." *The Sacramento Bee*, 14 August 2008. Retrieved January 8, 2009, from <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>

McClure, Laura. "Fuming Over the Pot Clubs." *California Lawyer Magazine*, June 2006.

McCollum, Bill. "Landmark Bill Targeting Marijuana Grow Houses Becomes Law." Attorney General Bill McCollum News Release, 17 June 2008. Retrieved January 9, 2009, from <http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>

McDonald, Jeff. "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006. Retrieved February 24, 2009, from http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html

McKinley, Jesse. "Marijuana Hotbed Retreats on Medicinal Use." *New York Times*, 9 June 2008. Retrieved March 19, 2009, from http://www.nytimes.com/2008/06/09/us/09pot.html?_r=1&em=&ex=1213329

"Medical Marijuana Shop Robbed." *Santa Barbara Independent*, 10 August 2006. Retrieved January 9, 2009, from <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

Meyer, Josh, and Scott Glover. "U.S. Won't Prosecute Medical Pot Sales," 19 March 2009. Retrieved March 21, 2009, from <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0,4987571.story>

Miller, Tim. *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 25 October 2006.

National Drug Intelligence Center. *Domestic cannabis cultivation assessment 2007*, 26 February 2007. Retrieved January 9, 2009, from <http://www.usdoj.gov/ndic/pubs21/22486/>

Office Consolidation: By-law 361-2004 of the Corporation of the City of Brampton, 22 November 2004.

"Organized Crime Behind 'Medical' Marijuana Dispensary in California." *Pushingback*, 29 September 2006. Retrieved January 9, 2009, from http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx

Ortega, Fred. "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 28 August 2006. Retrieved January 9, 2009, from <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&staart=0&sid=15b6da115a0da43facb44195cbb>

-
- Packel, Israel. *The Organization and Operation of Cooperatives*, 4th ed. Philadelphia: American Law Institute, 1970.
- Ramsay, Janis. “Special Report: Grow-op House Can Still Be Dream Home: Realtor Says.” *The Barrie Advance*, 25 August 2008. Retrieved January 9, 2009, from <http://www.mapinc.org/drugnews/v08/n818/a06.html>
- Ruane, Don. “Grow Houses Can Impact Utility Bills, Public Safety.” News-press.com, 12 April 2008. Retrieved January 9, 2009, from <http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>
- Scaramella, Mark. “The Mendo Pot Chronicles.” *Anderson Valley Advertiser*, 3 October 2007. Retrieved January 9, 2009, from <http://www.theava.com/07/1003-mendopot.html>
- Scaramella, Mark. “No Good Deed Goes Unpunished.” *Anderson Valley Advertiser*, 16 June 2004. Retrieved January 9, 2009, from <http://www.theava.com/04/0616-cerelli.html>
- Stanton, Sam. “Pot Clubs, Seized Plants, New President—Marijuana’s Future Is Hazy.” *Sacramento Bee*, 7 December 2008, 19A.
- Steckler, Craig T. *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006.
- Stewart, Ethan. (2007, May 3). “The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities.” *Santa Barbara Independent*, 3 May 2007. Retrieved January 9, 2009, from <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>
- Van Derbeken, Jaxon, Charlie Goodyear, and Rachel Gordon. “3 S.F. pot clubs raided in probe of organized crime.” *San Francisco Chronicle*, 23 June 2005. Retrieved January 9, 2009, from <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>
- “What has federal law enforcement said about medical marijuana?” Medical Marijuana ProCon.org, 2009. Retrieved February 24, 2009, from <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>
- “What has the U.S. DEA said about medical marijuana?” Medical Marijuana ProCon.org, 2005.



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: PUBLIC WORKS *GB*
SUBJECT: SAN DIEGO REGION STORM WATER COPERMITTEE
REFERENCE CONDITIONS STUDY FOR TOTAL MAXIMUM
DAILY LOADS (TMDLS)

BACKGROUND:

In February 2010, the San Diego Regional Water Quality Control Board (Regional Board) adopted a Total Maximum Daily Load (TMDL) for bacteria, which impacts 20 impaired beaches and creeks across San Diego and south Orange Counties. Sixteen of the 21 San Diego Municipal Copermittees are named as responsible parties to comply with the Bacteria TMDL order. The City of Imperial Beach is not one of the 16 Copermittees named in the current TMDL order; however, the City will be impacted in the future with a similar TMDL for bacteria as well as TMDLs for multiple other pollutants.

With this current Bacteria TMDL and multiple other pending TMDLs on the horizon for the San Diego Region, the County of San Diego is soliciting support from the storm water Copermittees in San Diego and south Orange Counties to provide financial commitment for a Watershed Reference Condition Study (Study). The goal of the study is to collect the data necessary to derive science-based and accurate allowable exceedance frequencies for bacteria and other select pollutants. This natural baseline of acceptable pollutant levels is the foundation from where TMDL load allocations are developed and allocated by the Regional Board.

The current proposed bacteria TMDL was the motivation for initiating this Study because the Regional Board is moving ahead on establishing TMDL load allocations using a reference condition study based in Los Angeles basin and not in the San Diego Region. At the time of the current Bacteria TMDL's adoption, the Regional Board left the option open for the San Diego Copermittee's to conduct a local Reference Conditions Study in return for reopening the discussion on the load distribution that is part of the TMDL. The cost for meeting TMDL compliance can be very expensive and is therefore crucial that the regulations which are imposed as a result of TMDLs are based on the best available science. Using a reference condition site outside the San Diego Region to develop TMDL loads may lead to inaccurate load allocations and unnecessary costs. Unfortunately, the Regional Board is set in using the Los Angeles area reference conditions unless the San Diego Copermittees undertake a Study that provides more accurate data for the region.

DISCUSSION:

Background on TMDLs

The Total maximum Daily Load (TMDL) term refers to a regulatory program under the Clean Water Act (CWA) to establish numeric water quality standards for impaired water body segments and the proposed plan to meet those water quality standards. Section 303(d) of the CWA requires states to list impaired water ways that do not meet minimum water quality standards. In California, the State Water Resource Control Board identifies the water ways that are impaired by pollutants and registers them on the Environmental Protection Agency's (EPA) 303(d) list.

In the San Diego Region we have 274 water body segments that are impaired and listed on the 2008 EPA 303(d) list. These current listings account for 1570 pollutants that will require a TMDL under the CWA. In Imperial Beach we are affected by 3 impaired water body segments that account for 20 pollutants that will require a TMDL. The Regional Board has set an ambitious goal to target each of these impaired water ways over the next 13 years by developing TMDLs, many of which will target multiple pollutants.

The process for developing and implementing TMDLs for each 303(d) listed pollutant is time consuming and potentially very costly. The Regional Board has identified five steps in the process to develop a TMDL. These include the following:

1. **Involve Stakeholders:** Stakeholders can be the general public, business interests, government entities, environmental groups, or anyone concerned with a particular water body. Stakeholders are involved at the beginning of the process in order to provide input to the RWQCBs on the development of TMDLs.
2. **Assess water body:** In this step, pollution sources and amounts, or "loads," are identified for various times of the year. Then the overall effect of these loads on the water body is determined.
3. **Define the Total Load and Develop Allocations:** To ensure water quality standards are met and beneficial uses are attained, allocations of pollutant load to all sources are established for the pollutant(s) in question. The sum of the allocations must result in the water body attaining the applicable water quality standards. Federal regulations provide that TMDLs can be expressed as mass, thermal energy, toxicity or other appropriate measures. In California, toxicity and other appropriate measures often serve as the basis for TMDLs. As watershed management efforts mature it is likely that an increased dependence on measures other than mass or thermal energy will serve as the basis for TMDLs.
4. **Develop Implementation Plan:** This step is a description of the approach and activities to be undertaken to ensure the allocations are met and identification of parties responsible for carrying out the actions.
5. **Amend the Basin Plan*:** Federal law requires that TMDLs be incorporated into the Basin Plans. The Basin Plan is a legal document that describes how a Regional Board would manage water quality. The TMDLs must be formally incorporated into the Basin Plan to be part of the basis for Regional Board actions. Basin Plan amendments are adopted through a public process that requires approval of the TMDLs by a Regional Board, the State Board, the Office of Administrative Law, and USEPA Region 9.

** A Basin Plan is the State Water Resources Control Board master water quality control planning document for designated water bodies. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. A Basin Plan is adopted and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.*

A complete TMDL must contain the following elements in order to be approved by the EPA:

- **Problem Statement:** Describes the water body, impaired beneficial uses, and pollutant(s) causing the impairment.
- **Numeric Targets:** Expresses the desired condition of the water body to protect beneficial uses. Defines indicators and associated target(s) necessary to meet numeric or narrative water quality objectives.
- **Source Analysis:** Assesses the relative contributions of different pollutant sources or causes and the extent of necessary reductions/controls.
- **Linkage Analysis:** Describes the relationship between numeric target(s) and sources and estimates the ability of the water body to assimilate the pollutant.
- **Allocations:** Allocates responsibility for pollutant reduction. Allocations may be specific to agencies or persons (businesses), or general by source category or sector. The sum of individual allocations must equal the total allowable pollutant level.
- **Margin of Safety:** Accounts for uncertainty associated with calculating pollutant loads and their impact on water quality. The margin of safety may be implicit (i.e., through use of conservative assumptions) or explicit (i.e., by assigning a specific allocation to the margin of safety).
- **Implementation Plan:** Details pollution prevention, control, and restoration actions, responsible parties and schedules necessary to attain water quality standards. Identifies enforceable measures (e.g. prohibition) and triggers for Regional Board action (e.g., performance standards).
- **Monitoring/Re-evaluation:** Describes the monitoring strategy that will be used to evaluate the effectiveness of the TMDL and a schedule for reviewing and, if necessary, revising the TMDL and associated implementation elements.

Proposed Reference Condition Study

With the anticipation of multiple pending TMDLs in the San Diego Region, the County of San Diego is proposing a proactive Study that will provide the scientific basis for the development of accurate TMDL load allocations for select pollutants (bacteria, nutrients, metals, and possibly others depending on Copermittee support). The proposed Study will involve measurements of wet and dry weather flows and constituents at select reference sites to identify the natural pollution level from an undeveloped watershed in the San Diego Region. The scope of this Study falls outside the existing San Diego Region Stormwater Copermittees' Work Plan and Budget and therefore must be funded without the use of Regional Monitoring funds. The cost of investing in this Study could be minor compared to savings it could bring during the implementation process for TMDLs. Imperial Beach would benefit from this study when the City is subsequently faced with their own TMDLs for bacteria, nutrients, and metals.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

The estimated cost for the Reference Condition Study is \$1,700,000. All San Diego Municipal Stormwater Copermittees are strongly encouraged to contribute funding to the Study based on a pre-established cost sharing formula. Imperial Beach's cost share is estimated to be approximately \$10,000 split over three consecutive fiscal years. These costs are proposed to be absorbed into the existing operations budget for the Environmental Division.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Discuss the merit and drawback of participating in the Reference Study.
3. Give tentative support to the proposed Reference Conditions Study

4. Authorize staff to respond to the Copermittees that the City of Imperial Beach will tentatively commit to sharing in the cost of the study.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Draft Work Plan for San Diego Reference Stream Survey

**San Diego Reference Stream Survey
Draft Workplan
10-14-2010**

Background and Project Goal

The streams and rivers found in Orange and San Diego County watersheds are an important natural resource for the region and provide critical natural habitat for terrestrial and aquatic species. They serve as refuge, foraging areas and breeding groups for a number of threatened and endangered species. Changes in watershed runoff over the past century have resulted in increased wet and dry weather runoff to streams, which bring increased loads of bacteria, nutrients, heavy metals and other contaminants. As a result many streams in the region have been placed on the State's 303(d) for impairment of beneficial uses.

The current regulatory strategy to address these water quality problems is through the promulgation of total maximum daily loads (TMDLs). An important component of a TMDL is the numeric target, which established the limit of the contaminant required to achieve beneficial uses. Progress on TMDLs in the San Diego Regional Water Quality Control Board's (SDRWQCB) region is currently hampered by the lack of a consistent set of scientifically-defensible numeric targets for streams. Existing standards do not account for natural sources of constituents.

One approach to developing numeric targets that account for "natural sources" is to establish the concentrations or loads from streams in a minimally-disturbed or "reference" condition. The goal of this project is to collect the data necessary to derive reasonable and accurate numeric targets for bacteria, nutrients, and heavy metals, based on a reference approach. These numeric targets do not constitute new policy (ie. water quality standards), but rather provide a scientific basis for selecting numeric targets during a TMDL.

Monitoring Questions

The general approach and specific design elements of the project are driven by a series of monitoring questions. These questions were drafted by a group of watershed stakeholders in San Diego and Southern Orange Counties. This section provides an overview of the philosophical approach of the project and a list of the monitoring questions generated by stakeholders.

During early discussions, stakeholders expressed interest in establishing numeric targets based on reference beaches and streams. Subsequent discussions that factored in cost caused the group to narrow the focus to streams, because of the availability of data on reference beaches conducted at Leo Carillo, San Mateo Lagoon and San Onofre State Beaches (Schiff et al. 2005). Enteric bacteria concentrations were of primary interest, but the group acknowledged the efficiency and importance of establishing reference for nutrients. A decision was made to include nutrients as an additional option. The core monitoring question posed by the stakeholders was as follows:

"What is the exceedence frequency of fecal indicator bacteria and nutrients at reference streams in the SDRWQCB Region?"

Additional questions posed by stakeholders were intended to capture the range of natural variability by: 1) flow regime (wet or dry weather), 2) Wet weather hydrologic factors, 3) landscape factors, and 4) in-stream biotic and abiotic factors. Specific questions are given in Table 1.

Table 1. List of questions generated by SDRWQCB stakeholders

Question
1. How does the exceedence frequency vary between summer dry weather, winter dry weather and wet weather?
2. How does the exceedence frequency vary by hydrologic factors, including: <ol style="list-style-type: none"> a. Size of storm (wet weather only) b. Discharge flow rate and volume (wet and dry weather) c. Beginning vs. end of storm season (wet weather only)
3. How does exceedence frequency vary by input factors? <ol style="list-style-type: none"> a. Size of catchment b. Geology
4. How does exceedence frequency vary by biotic and abiotic factors including: <ol style="list-style-type: none"> a. Algal cover and/or biofilms b. Water quality (temperature, dissolved oxygen, temperature, total suspended solids concentration)

Discussion of these questions led to several important considerations for how to prioritize effort and implications for the design of the study:

- Per question 1, stakeholders agreed that wet weather was a high priority
- Per question 3, stakeholders were also interested in elevation as a variable, but also recognized that reference streams in lower elevations were likely to be unavailable. Therefore, elevation was considered to be a secondary consideration to size of catchment and geology.
- Per question 4, stakeholder understood that abiotic and biotic factors within the stream channel habitat and water quality could affect reference condition. However, including these factors explicitly in the design would be cost-prohibitive. Therefore, these constituents would be measured and accounted for as co-factors in the data analysis.

Technical Approach

The general conceptual approach to be used in this project involves the measurement of wet and dry weather flows and constituents at minimally disturbed "reference" sites. Natural concentrations of bacteria and nutrients during wet and dry weather can be highly variable, therefore replication in space (many sites) over multiple events is required to adequately characterize median values and estimate variability. Because the amount of limited resources available for this project are not yet quantified, the approach involved developing a modular workplan with options that can be scaled to existing needs and resources.

Site Selection and Number of Sites

Site selection is driven by three principal criteria:

- Catchments draining to the sites should be natural and as close to pristine condition as possible, with contributing drainage area at least 95% undeveloped.
- Sites should be representative of two major classes of geologic settings: lithogenic and igneous/metamorphic

- Sites should be targeted toward streams have large enough catchments to reliably generate flow during both storm and non-storm conditions. Three size classes are targeted, with the size distribution driven by GIS analysis of data and stakeholder input.

A total of six sites will be selected as given below:

- Igneous/metamorphic geology, Small catchment
- Sedimentary geology, Small catchment
- Igneous/metamorphic geology, Medium catchment
- Sedimentary geology, Medium catchment
- Igneous/metamorphic geology, Large catchment
- Sedimentary geology, Large catchment

In addition to these principal criteria, a number of other criteria are proposed:

- Field reconnaissance should reveal no evidence of anthropogenic effects such as septic tanks, isolated residence, excessive wildlife or human use, or evidence of excessive channel erosion, no 303(d) list.
- Sites should have either year-round or prolonged dry weather flow that allows sampling during both storm and non-storm conditions. A stream with prolonged dry weather flow can be defined as one that still flows one to two months after the end of the last storm, even if it dries up later in the season.
- Sites should not be within catchments that have burned during the previous three years.

Table 2 gives a summary of level of effort by sampling type and indicator group. The sampling is described in more detailed in the sections below:

Table 2 Summary of Sampling Effort by Type of Sampling and Indicator Group

Type of Sampling	No of Samples		
	Traditional indicator bacteria	Nutrients	Metals
Wet Weather	324	324	324
Dry Weather	550	225	225

Wet Weather Sampling

Sampling frequency at the six sites consists of three targeted events. The effort will target three types of storms, with an effort to select events in the early season (before December 31st) and late season (after January 1st):

- Large storm (greater than median rainfall)
- Small-medium storm (less than median rainfall)
- Trigger storm, defined at the threshold at which a wet weather event is defined in the TMDL (e.g. 0.1-0.2 inches)

Because of the unpredictability of wet weather sampling, targeted storm events which are left unsampled will roll over to the next year. To summarize, six sites will be sampled three times over 1-2 years for a total of 18 events.

At each site, water quality sampling methods will vary by constituent. For traditional indicator bacteria, sampling consists of a pollutagraph of 10 samples on the first day of the onset of the storm, with replicate grab samples of water on each of three days that follow. These samples may also be used for rapid indicator and community bacterial analysis, to provide additional temporal coverage to the above conventional FIB measurements, but note that these costs are not included in the budget.

For nutrients and metals, water will be sampled via autosampler, with the same approach as is done for bacteria.

Dry Weather Sampling

Dry weather sampling frequency will consist of one year of sampling at 10 sites during winter and summer dry weather periods, beginning in October 2011. Sampling frequency varies as follows:

- Traditional Indicator Bacteria: Weekly
- Nutrients and metals: Biweekly

A site is eligible for sampling if it had not received measurable rainfall for at least 24 h and flow was no more than 20% above baseflow. Sampling will continue as long as there was measurable stream flow. For intermittent streams, sampling will be suspended once the stream was too low to sample.

Water samples will be collected as composite grab samples, with equivalent volumes collected from three different points across the stream (approximately 10, 50, and 90% distance across). These samples will be taken from the flowing portion of the streams at a depth sufficient to exclude surface scum without introducing bottom sediment. A replicate water sample was collected in the same way after completion of the initial water sample for approximately 25% of the samples.

Instantaneous velocity will be measured by a hand-held Marsh McBirney flow meter.

Wet and Dry Weather Constituents

Wet and dry weather constituents are summarized in Table 3. Of these constituents, enteric health bacteria indicators (*E. coli*, fecal and total coliform, bacteriodes or norovirus) and *in situ* parameters measured with a hand-held water quality instrument (conductivity, pH, temperature, etc.) are considered of primary importance. The additional parameters are considered "secondary."

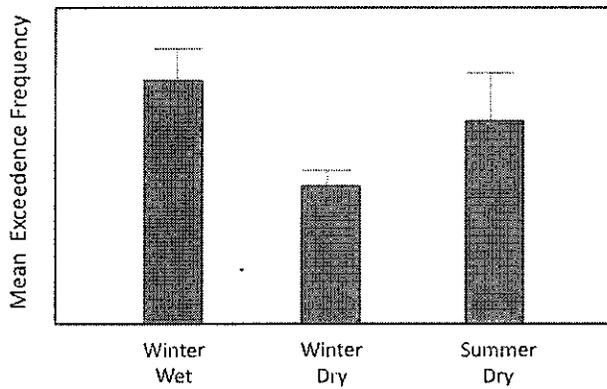
Table 3. Wet and dry weather constituents. * designates constituents that are NOT currently included in budgeting exercise.

Constituent	Medium	Wet Weather	Dry Weather
In situ parameters Flow Dissolved oxygen Temperature Turbidity pH Conductivity	Water	Yes, with exception of dissolved oxygen	Yes
Stream physiochemical TSS Alkalinity Hardness TDS	Water	Yes	Yes
Bacteria Enterococcus Fecal coliform Total coliform Bacteriodes human marker or norovirus Bacteria community analysis* Rapid fecal indicator bacteria*	Water	Yes	Yes
Nutrients and Carbon Nitrate+Nitrite Ammonia Phosphate Total nitrogen Total phosphorus Particulate nitrogen & carbon Particulate phosphorus Dissolved organic carbon	Water	Yes	Yes
Heavy and Trace Metals-total and dissolved Copper Zinc Cadmium Chromium Nickel Lead	Water	Yes	Yes (Monthly)
Stream condition Biofilm Macroalgal % cover Benthic algal chlorophyll a Canopy cover Stream substrate	In-channel habitat	No	Yes

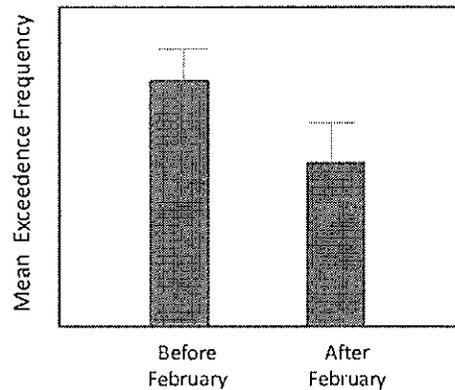
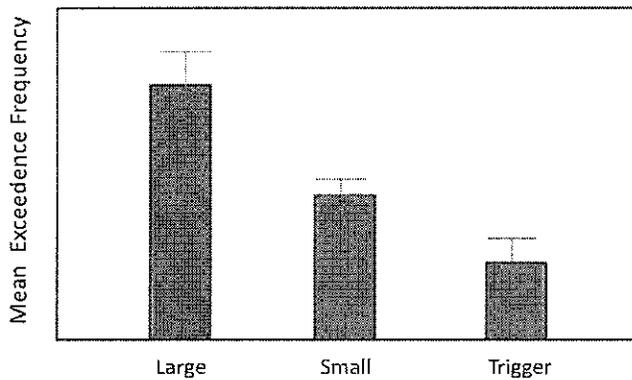
Expected Outcomes

This study will produce graphs and tables that address the key questions posed agreed upon by the stakeholders. In this section, example graphics are given by each question

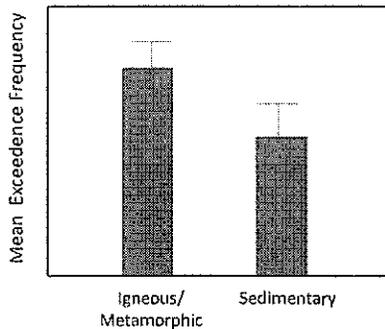
How does the exceedence frequency vary between summer dry weather, winter dry weather and wet weather?



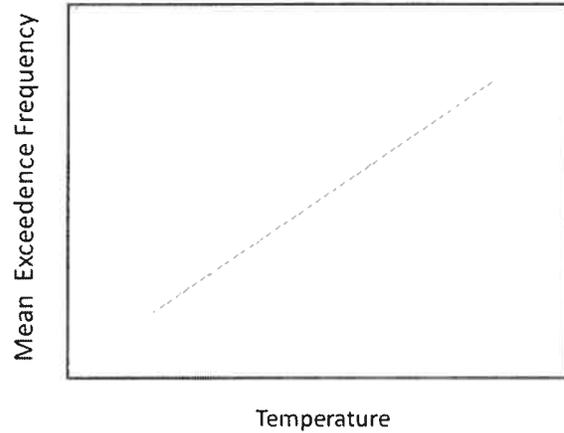
How does the exceedence frequency vary by hydrologic factors, including storm size and timing of storm?



How does exceedence frequency vary by input factors such as size of catchment and geology?



How does exceedence frequency vary by biotic and abiotic factors including, algal cover, water quality (temperature, dissolved oxygen, total suspended solids, etc.)



Products and Schedule of Work Activities

This study will produce five interim and final deliverables:

- Quarterly progress reports
- Sampling and analysis plan
- Summary of field sampling success
- Oral presentations of preliminary and final results
- Draft and final technical report

Table 4 presents the sequence of project activities

Task	Quarter and Year											
	Jul – Sept 11	Oct- Dec 11	Jan- Mar 12	Apr – Jun 12	Jul – Sept 12	Oct- Dec 12	Jan- Mar 13	Apr – Jun 13	Jul – Sept 13	Oct- Dec 13	Jan- Mar 14	Apr- Jun 14
Sampling & analysis plan												
Field logistics and sampling												
Data analysis and oral presentation of findings												
Draft and final report												

Budget

Task	Description	SCCWRP Labor	Direct	Total
1	Project Administration	\$35,949	\$0	\$35,949
2	Sampling and Analysis Plan	\$60,800	\$0	\$60,800
3	Wet Weather Bacteria	\$285,906	\$278,040	\$563,946
4	Wet Weather Nutrients	\$66,545	\$61,614	\$128,159
5	Wet Weather Metals	\$58,713	\$171,623	\$230,336
6	Dry Weather Bacteria	\$140,105	\$299,250	\$439,355
7	Dry Weather Nutrients	\$72,492	\$26,644	\$99,136
8	Dry Weather Metals	\$57,950	\$81,375	\$139,325
Total		\$778,459	\$918,545	\$1,697,005

DRAFT



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: PUBLIC WORKS *HB*
SUBJECT: RESOLUTION AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – RTIP STREET IMPROVEMENTS YEAR 6 CIP PROJECT (S10-101)

BACKGROUND: The Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 included the annual allotment of Regional Transportation Improvement Projects (RTIP) funds for CIP projects as approved by City Council through Council adopted resolutions each fall. On December 2, 2009, City Council awarded the design of RTIP Street Improvements Year 6 CIP Project to BDS Engineering to include the following streets or street segments:

- 3rd Street (Imperial Beach Blvd. to Elm Ave.)
- 7th Street (Encina Avenue to Imperial Beach Blvd.)
- Grove Avenue (Connecticut Street to 8th Street)
- Adelfa Court (Oneonta Ave. to Hemlock Ave.)
- Delaware Street (Grove Ave. to Imperial Beach Blvd.)
- Arriba Avenue (9th Street to cul-de-sac)
- Elder Avenue (3rd Street to Seacoast Drive)
- Elder Avenue (10th Street to Florida Street)
- Elder Avenue (12th Street to East City Limits)
- 14th Street (Grove Ave. to Iris Ave.)
- Hemlock Avenue (Adelfa Court to 10th Street)
- Daisy Avenue (4th Street to 2nd Street)

The scope of work on these street/street segments was for sidewalk infill, new ADA intersection access ramps, cross gutter replacement, curb and gutter replacement and street overlay.

After receipt of the 30% drawings along with an engineer's estimate, it was clear that the improvements planned for these street / street-segments exceeded the budget available. Thus staff with the assistance of BDS Engineering reduced the number of streets to receive improvements for the Year 6 program. The streets / street segments included in the advertised RTIP Street Improvements Year 6 CIP Project (S10-101) were:

- Delaware Street (Grove Ave. to Imperial Beach Blvd.)
- Elder Avenue (3rd Street to Seacoast Drive)
- Elder Avenue (10th Street to Florida Street)
- Elder Avenue (12th Street to East City Limits)
- 14th Street (Grove Ave. to Iris Ave.)

BDS Engineering completed the plans and specification on or about November 2, 2010. The project was advertised in the Imperial Beach Eagle & Times and other sources starting November 11, 2010. Bid opening was scheduled for Tuesday, December 7, 2010.

DISCUSSION: The bids were opened and evaluated in an advertised public meeting, at 2:00 p.m., December 7, 2010. The lowest responsive and qualified bidder for RTIP Street Improvements Year 6 CIP Project (CIP S10-101) was from ATP General Engineering Contractors at a bid price of \$875,822.26.

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

1. ATP General Engineering Contractors	\$ 875,822.26
2. LB Civil Construction	\$ 1,038,053.30
3. Daley Corporation	\$ 1,045,024.30
4. Koch-Armstrong General Engineering, Inc.	\$ 1,053,791.75
5. Ramona Paving & Construction Corp., Inc.	\$ 1,074,891.35
6. SRM Contracting & Paving	\$ 1,089,245.00
7. Wier Construction Corporation	\$ 1,115,119.95
8. Hazard Construction	\$ 1,132,232.00
9. PAL General Engineering Inc.	\$ 1,148,117.59
10. Portillo Concrete Inc.	\$ 1,185,663.73
11. New Century Construction, Inc.	\$ 1,468,432.00

The Engineer's Estimate was \$1,193,004.31.

ENVIRONMENTAL DETERMINATION:

Project is exempt from CEQA pursuant to CEQA Guidelines Section 15302(c): Replace or Reconstruction of Existing Utility Systems and Facilities. Not a project as defined by CEQA.

FISCAL IMPACT:

REVENUES:

RTIP Funds available through this fiscal year \$ 1,801,302.00

EXPENDITURES:

Project Design	\$ 94,000.00
Construction Contract	\$ 875,822.26
Contract Administration & Inspection	\$ 50,000.00
TOTAL EXPENDITURES	\$1,019,822.26

Revenues exceed expected expenditures. Any remaining RTIP funds will be carried over to RTIP Street Improvements Year 7 project.

DEPARTMENT RECOMMENDATION:

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

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6981

RESOLUTION NO. 2010-6981

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – RTIP STREET IMPROVEMENTS YEAR 6 CIP PROJECT (S10-101)

WHEREAS, the Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 included the annual allotment of Regional Transportation Improvement Projects (RTIP) funds for CIP projects as approved by City Council through Council adopted resolutions each fall; and

WHEREAS, on December 2, 2009, City Council awarded the design of the RTIP Street Improvements Year 6 CIP Project to BDS Engineering; and

WHEREAS, the scope of work on the CIP year 6 Project streets / street segments was for sidewalk infill, new ADA intersection access ramps, cross gutter replacement, curb and gutter replacement and street overlay; and

WHEREAS, the streets / street segments included in the advertised RTIP Street Improvements Year 6 CIP Project (S10-101) were:

- Delaware Street (Grove Ave. to Imperial Beach Blvd.)
- Elder Avenue (3rd Street to Seacoast Drive)
- Elder Avenue (10th Street to Florida Street)
- Elder Avenue (12th Street to East City Limits)
- 14th Street (Grove Ave. to Iris Ave.); and

WHEREAS, the project was advertised in the Imperial Beach Eagle & Times and other sources starting November 11, 2010; and

WHEREAS, the bids were opened and evaluated in an advertised public meeting at 2:00 p.m., December 7, 2010; and

WHEREAS, the lowest responsive and qualified bidder for RTIP Street Improvements Year 6 CIP Project (CIP S10-101) was from ATP General Engineering Contractors at a bid price of \$ 875,822.26; and

WHEREAS, the Engineer's Estimate was \$1,193,004.31.

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 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 City Council of the City of Imperial Beach at its meeting held on the 15th day of December 2010, by the following vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: PUBLIC WORKS *HAL*
SUBJECT: RESOLUTION AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – IMPERIAL BEACH CITY-WIDE STREET LIGHTING UPGRADE (S11-103)

BACKGROUND: In September 2009 City staff became aware of Energy Efficient and Conservation Block Grants (EECBG) Program funds being available to local governments to “implement energy efficiency measures and photovoltaic systems.” The EECBG was funded through the American Recovery and Reinvestment Act (ARRA) of 2009. On November 4, 2009 and August 10, 2010, City Council adopted Resolution No. 2009-6821 and Resolution 2010-6922 respectively approving an EECBG funded project to replace the City owned high-pressure sodium street lights with energy saving Induction Lighting. In December 2009, City staff applied with the California Energy Commission (CEC) for the City’s allocation to fund this project. In October 2010, the City received notification from the CEC that the City of Imperial Beach had a fully executed grant agreement for a total amount of \$145,393 and that the City could proceed with contracting for the work.

DISCUSSION: On November 4, 2010, staff initiated a 3.5 week advertisement for the City-Wide Street Lighting Upgrade Project (S11-103). The scope of work for this project was for the removal and replacement of street lighting luminaries and shepherd’s hooks (Old Palm) within the City. Approximately 121 induction street lights (cobra heads), and 18 shepherd’s hook and QL induction street lights (Old Palm) will be installed on City streets. In addition, seven (7) of each luminary type to be installed shall be provided to Public Works Director (SPARE).

The bids were opened and evaluated in an advertised public meeting, at 2:00 p.m., November 30, 2010. The lowest responsive and qualified bidder for City-Wide Street Lighting Upgrade Project (S11-103) project was from Clark Telecom & Electric Inc. at a bid price of \$99,469.

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

- | | |
|---|--------------|
| 1. Clark Telecom & Electric, Inc. | \$ 99,469.00 |
| 2. Republic Intelligent Transportation Services, Inc. | \$ 99,540.00 |
| 3. JFL Electric, Inc. | \$113,440.00 |
| 4. Ace Electric, Inc. | \$115,535.00 |
| 5. HMS Construction, Inc. | \$145,520.00 |

The Engineer’s Estimate was \$120,000.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

This project will be fully funded through the EECBG program.

DEPARTMENT RECOMMENDATION:

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

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6974

RESOLUTION NO. 2010-6974

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AWARDING A CONTRACT FOR CERTAIN PUBLIC WORKS PROJECT – IMPERIAL BEACH CITY-WIDE STREET LIGHTING UPGRADE (S11-103)

WHEREAS, in September 2009 City staff became aware of Energy Efficient and Conservation Block Grants (EECBG) Program funds being available to local governments to “implement energy efficiency measures and photovoltaic systems.”; and

WHEREAS, the EECBG was funded through the American Recovery and Reinvestment Act (ARRA) of 2009; and

WHEREAS, on November 4, 2009 and August 10, 2010, City Council adopted Resolution No. 2009-6821 and Resolution 2010-6922 respectively approving an EECBG funded project to replace the City owned high-pressure sodium street lights with energy saving Induction Lighting; and

WHEREAS, in December 2009, City staff applied with the California Energy Commission (CEC) for the City’s allocation to fund this project; and

WHEREAS, in October 2010, the City received notification from the CEC that the City of Imperial Beach had a fully executed grant agreement for a total amount of \$145,393 and that the City could proceed with contracting for the work; and

WHEREAS, on November 4, 2010, staff initiated a 3.5 week advertisement for the City-Wide Street Lighting Upgrade Project (S11-103); and

WHEREAS, the scope of work for this project was for the removal and replacement of street lighting luminaries and shepherd’s hooks (Old Palm) within the City; Approximately 121 induction street lights (cobra heads), and 18 shepherd’s hook and QL induction street lights (Old Palm) plus shelf spares; and

WHEREAS, the bids were opened and evaluated in an advertised public meeting, at 2:00 p.m., November 30, 2010; and

WHEREAS, the lowest responsive and qualified bidder for City-Wide Street Lighting Upgrade Project (S11-103) project was from Clark Telecom & Electric Inc. at a bid price of \$99,469; and

WHEREAS, The Engineer’s Estimate was \$120,000.

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 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 City Council of the City of Imperial Beach at its meeting held on the 15th day of December 2010, by the following vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK



AGENDA ITEM NO. 6.8

**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL AND CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR

MEETING DATE: DECEMBER 15, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR *GW*

SUBJECT: MONTHLY UPDATE REPORT ON THE REDEVELOPMENT OF THE SEACOAST INN HOTEL

BACKGROUND:

At the City Council meeting on Wednesday, April 21, 2010, the City Council approved a Memorandum of Understanding (MOU) between the City/Redevelopment Agency and the Developer/Property Owners of the Seacoast Inn (Imperial Coast Limited Partnership) outlining financial and other commitments for the redevelopment of the Seacoast Inn. Also approved as part of the MOU was a Project Schedule detailing important project milestones for the project's development. At the meeting on April 21, 2010, the City Council also requested a monthly update report be made to advise the Council on progress made and compliance with the approved MOU and Project Schedule.

At the City Council meeting on May 19, 2010, City staff and Pacifica presented the first of the requested monthly updates. Staff advised the City Council that the demolition permit had been issued and the building permit plans (structural and architectural) had been resubmitted for plan check. Pacifica advised the City Council on progress made with respect to the schedule contained in the Memorandum of Understanding (MOU). The City Council requested that, for future monthly updates, all information and/or schedule updates should be provided to the City Council with their agenda packages rather than at the time of the meeting as a last minute agenda item. The City Council has received monthly updates at the second meeting of each month since that time.

DISCUSSION:

On Wednesday, December 15, 2010, the City Council will receive the monthly update on the Seacoast Inn project. Staff has been advised that Allison Rolfe of Pacifica will not be available for the report to the Council. As such, staff will provide whatever update it can at that time. It is expected that staff will report on the status of the building permit submittal and, if known, the status of project financing and the anticipated construction start date.

City staff is continuing to meet with Pacifica's general contractor and Project Manager and a bi-weekly basis to review issues pertaining to the building permit plans, building permit issuance and construction of the hotel.

FISCAL ANALYSIS:

No fiscal impact with this report.

ENVIRONMENTAL REVIEW

None required with this report.

DEPARTMENT RECOMMENDATION:

That the City Council/Redevelopment Agency receive the update report on the Seacoast Inn project and provide comment and input as necessary.

CITY MANAGER'S RECOMMENDATION

Approved Department recommendation.



Gary Brown, City Manager/Executive Director

Attachments: None.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

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

MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: JACQUELINE M. HALD, CITY CLERK

SUBJECT: ANNUAL CITY COUNCIL REPRESENTATION ASSIGNMENTS

BACKGROUND & DISCUSSION:

Pursuant to Section 2.18.010.C of the Imperial Beach Municipal Code (I.B.M.C.), appointments to all commissions, boards and committees, except the planning commission and the personnel board, shall be made by the Mayor, with the approval of the City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Not a project as defined by CEQA.

FISCAL IMPACT:

None.

DEPARTMENT RECOMMENDATION:

1. Mayor appoint/change City Council Representation Assignments for 2011 in accordance with Chapter 2.18.010.C of the I.B.M.C.
2. City Council approve Mayor's appointments and changes to City Council Representation Assignments for 2011.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. 2010 City Council Representation Assignment List (with updated meeting and contact info)

**2010 CITY OF IMPERIAL BEACH
CITY COUNCIL REPRESENTATION ASSIGNMENTS**

<p>SOUTH BAY MAYORS AND CITY MANAGERS COMMITTEE: National City, Chula Vista, Coronado, and San Diego meet to discuss mutual concerns relating to South Bay.</p> <p>Primary - Mayor Janney 1st Alternate – Councilmember Bragg</p>	<p>Contact: City of Chula Vista Natalie Flores, Secretary to the Mayor (619) 691-5044</p> <p>Meetings: Usually 4th Monday of each month by the host city (rotated) at 12:00 p.m. for approximately 1 hour.</p>
<p>SD DIVISION, LEAGUE OF CALIFORNIA CITIES: A coalition of California cities meeting on issues of statewide concern.</p> <p>Primary – Councilmember Bragg 1st Alternate – Mayor Janney</p>	<p>Contact: City of La Mesa City Mary Kennedy, City Clerk (619) 667-1120</p> <p>Location: Four Points Sheraton 8110 Aero Drive San Diego, CA 92123</p> <p>Meetings: 2nd Monday of each month at lunchtime</p>
<p>SD DIVISION, LEAGUE OF CALIFORNIA CITIES – LEGISLATIVE SUB-COMMITTEE: A coalition of San Diego County cities that reviews and provides direction to the San Diego Division membership on bills pending before the Legislature.</p> <p>Primary – Councilmember Bragg 1st Alternate – Mayor Janney</p>	<p>Contact: Catherine Hill, Regional Affairs Manager (619) 295-8282</p> <p>Location: Four Points Sheraton 8110 Aero Drive San Diego, CA 92123</p> <p>Meetings: 2nd Monday of each month at lunchtime</p>
<p>LEAGUE OF CALIFORNIA CITIES - COASTAL CITIES INTEREST GROUP A coalition of California cities meeting on statewide coastal issues.</p> <p>Primary – Mayor Janney 1st Alternate – Councilmember McCoy</p>	<p>Contact: Mary Creasey, Public Affairs Analyst League of California Cities 1400 K Street Sacramento, CA 95814 (916) 658-8243</p> <p>Location: TBD (2 meetings by conference call; 1 meeting at Annual Conference in September)</p> <p>Meetings: TBD</p>
<p>METROPOLITAN TRANSIT SYSTEMS BOARD: Public transportation issues.</p> <p>Primary – Mayor Janney 1st Alternate – Councilmember Bragg</p>	<p>Contact: Valerie Vizkeleti, Clerk of the Board (619) 557-4515</p> <p>Location: 1255 Imperial Ave., Ste. 1000 San Diego, CA 92101-7490 (619) 231-1466</p> <p>FAX: (619) 234-3407</p> <p>Meetings: Typically 2nd or 4th Thursdays of each month at 9:00 a.m. (Meeting schedule available) (\$150/meeting – not to exceed eight meetings)</p>
<p>SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) BOARD: The regional council of governments, which fosters cooperation on solving regional issues, such as transportation.</p> <p>Primary – Mayor Janney 1st Alternate – Councilmember McCoy 2nd Alternate – Mayor Pro Tem King</p>	<p>Contact: Deborah Gunn, Clerk of the Board (619) 699-1912</p> <p>Location: 401 B Street, Ste. 800 First Interstate Plaza San Diego, CA 92101</p> <p>FAX: (619) 699-6905</p> <p>Meetings: Executive Committee: 2nd Friday of each month at 9:00 a.m. Board Policy/Business: 2nd Friday of each month at 10:00 a.m. Board Business: 4th Friday of each month at 9:00 a.m. (\$100 Committee meeting / \$150 Board meeting)</p>
<p>SANDAG – SHORELINE PRESERVATION WORKING GROUP: To advise SANDAG on issues related to the adopted Shoreline Preservation Strategy and opportunities for beach replenishment.</p> <p>Primary – Mayor Janney 1st Alternate – Councilmember Bragg</p>	<p>Contact: Shelby Tucker, SANDAG (619) 699-1916</p> <p>Location: 401 B Street, Ste. 800 First Interstate Plaza San Diego, CA 92101</p> <p>FAX: (619) 699-1905</p> <p>Meetings: 1st Thursday of every other month 11:30 a.m. -1:00 p.m.</p>

**2010 CITY OF IMPERIAL BEACH
CITY COUNCIL REPRESENTATION ASSIGNMENTS**

<p>CHAMBER OF COMMERCE LIAISON: Primary – Mayor Pro Tem King 1st Alternate – Councilmember Rose</p>	<p>Contact: Kim Palkovic, Executive Assistant (619) 424-3151 Location: Community Room/behind City Hall 825 Imperial Beach Blvd. Meetings: 2nd Wednesday of each month at 5:00 p.m.</p>
<p>METRO WASTEWATER COMMISSION/JPA: Oversees the sewage system for the San Diego area and makes decisions regarding financial expenditures relating to the sewage system. Primary – Councilmember McCoy Alternate – Mayor Janney AFFORD (Padre Dam) – Amy – (619) 258-4614</p>	<p>Contact: Lori Anne Peoples (619) 476-2557 Location: 9192 Topaz Way, MOC II Auditorium San Diego, CA 92123 Meetings: 1st Thursday of each month 12:00 p.m. -1:30 p.m. (\$150/day)</p>
<p>BAYSHORE BIKEWAY WORKING GROUP: Purpose is to promote improvements to the 26-mile bikeway around San Diego Bay. Primary – Mayor Pro Tem King Alternate – Mayor Janney</p>	<p>Contact: Stephan Vance, SANDAG (619) 699-1924 Location: TBD Meetings: Quarterly, as needed</p>
<p>JOB CORPS LIAISON: Community Relations Council Primary – Councilmember Bragg Alternate – Mayor Janney</p>	<p>Contact: Frank Buttino, Business Community Liaison (619) 429-8500 x216 Location: 1325 Iris Ave., Building 60 Imperial Beach, CA 91932 Meetings: Once every quarter (notified in advance) at Culinary Arts Center at 11:30 a.m.</p>
<p>SOUTH COUNTY ECONOMIC DEVELOPMENT COUNCIL: To encourage private investment in the South San Diego County region as well as to promote the cultural, educational, social, and geographic opportunities of the area. Primary – Mayor Pro Tem King 1st Alternate – Councilmember Rose</p>	<p>Contact: Cindy Gomper Graves, Exec. Director (619) 424-5143 South County EDC 1111 Bay Blvd., Ste. E Chula Vista, CA 91911 Location: South County Regional Education Center 800 National City Blvd., National City Meetings: 1st Tuesday of each month at 7:30 a.m.</p>
<p>HEARTLAND COMMUNICATIONS FACILITY AUTHORITY JPA BOARD: A Joint Powers Authority between the Cities of El Cajon, Imperial Beach, La Mesa, Santee and Lemon Grove, and Fire Protection Districts San Miguel, Lakeside, East County, and Alpine. Primary – Councilmember Bragg 1st Alternate – Mayor Janney</p>	<p>Contact: Valerie Nellis (619) 441-1623 vnellis@heartlandfire.net Location: Ronald Reagan Community Center 200 East Douglas Ave. El Cajon, CA 92020 Meetings: Quarterly: 4th Thursday of January, April, July and October at 4:00 p.m. (\$100/meeting)</p>

CITY COUNCIL STANDING COMMITTEES

Military Affairs Subcommittee

Mayor Janney
Councilmember McCoy

CITY COUNCIL AD HOC COMMITTEES

Work with School Systems

Mayor Pro Tem King
Councilmember Bragg

Sand Replenishment Projects

Mayor Janney
Mayor Pro Tem King



**STAFF REPORT
CITY OF IMPERIAL BEACH**

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

MEETING DATE: DECEMBER 15, 2010
ORIGINATING DEPT.: JACQUELINE M. HALD, CITY CLERK

SUBJECT: 2011 CITY COUNCIL MEETING AND WORKSHOP CALENDAR

BACKGROUND AND DISCUSSION:

Historically, the City Council adopted the meeting calendar for the upcoming year after review of potential meeting schedule conflicts. After review of the holiday schedule and conferences scheduled for 2011, staff recommends the following:

- City Council Workshops on:
February 9, 2011
April 13, 2011
July 13, 2011
October 12, 2011
- Rescheduling of the January 19, 2011 City Council meeting for January 26, 2011 due to a conflict with the League of California Cities New Mayors and Councilmembers Conference.
- Cancellation of the February 2, 2011 City Council meeting due to a conflict with the SANDAG retreat.
- Cancellation of the September 21, 2011 City Council meeting due to a conflict with the League of California Cities Annual Conference scheduled for September 21-23, 2011.
- Cancellation of the December 21, 2011 City Council meeting due to the upcoming holiday.

Staff further recommends cancellation of the January 4, 2012 City Council meeting due to the City Furlough scheduled for December 26, 2011 through December 30, 2011 and New Year's holiday.

Please note: The January 5, 2011 City Council meeting was cancelled by previous Council action on December 16, 2009.

Pursuant to Section 2.12.040 A of the Imperial Beach Municipal Code, "*Unless otherwise specified by resolution, the City Council must hold regular meetings on the first and third Wednesdays of each month at an hour to be set by resolution. Regular meetings will be held in the council chambers at City Hall, 825 Imperial Beach Boulevard, Imperial Beach, or at another place within the City limits to which the meeting may be adjourned.*" Therefore, the City Council needs to discuss and set the time for City Council workshops and meetings.

FISCAL IMPACT:

None related to this report.

DEPARTMENT RECOMMENDATION:

1. Discuss proposed 2011 Calendar and meeting times for City Council Meetings and Workshops; and
2. Approve the 2011 City Council Calendar which includes City Council quarterly workshops on February 9, April 13, July 13, and October 12, 2011; rescheduling of the January 19, 2011 City Council meeting for January 26, 2011; cancellation of the February 2, 2011, September 21, 2011 and January 4, 2012 City Council meetings due to scheduling conflicts; and
3. Adopt Resolution No. 2010-6977 setting the time for City Council Workshops and Meetings.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6977
2. 2011 City Council Meeting Calendar
3. 2010/2011 City of Imperial Beach Holiday Schedule

RESOLUTION NO. 2010-6977

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING THE CALENDAR AND SETTING THE TIME FOR CITY COUNCIL MEETINGS AND WORKSHOPS FOR THE YEAR 2011

WHEREAS, Section 2.12.040 A of the Imperial Beach Municipal Code states, Unless otherwise specified by resolution, the City Council must hold regular meetings on the first and third Wednesdays of each month at an hour to be set by resolution.

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

1. Regular City Council meetings shall begin at __ (to be set by Council)____; and
2. City Council Workshops shall begin at __ (to be set by Council)____; and

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of December 2010, by the following vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

JANUARY						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

MARCH						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

JULY						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

AUGUST						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SEPTEMBER						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

OCTOBER						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

NOVEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

-  Council Meetings
-  Council Workshops
-  City Hall closed
-  City holidays/City Hall closed



City of Imperial Beach Holiday Schedule 2010-2011

2010 Holiday Schedule

Thursday, November 11	Veterans Day	City Hall Offices Closed
Thursday, November 25	Thanksgiving Day	City Hall Offices Closed
Friday, November 26	Day After Thanksgiving	City Hall Offices Closed
Friday, December 24	Christmas Eve	City Hall Offices Closed
Saturday, December 25	Christmas Day	Vacation Credit
December 27-30	Furlough	City Hall Offices Closed for the Holidays
Friday, December 31	New Year's Eve	<i>Friday Closed – Holiday Bank</i>

2011 Holiday Schedule

Saturday, January 1	New Year's Day	Vacation Credit
Monday, January 17	Martin Luther King, Jr. Day	City Hall Offices Closed
Monday, February 21	President's Day	City Hall Offices Closed
Thursday, March 31	Cesar Chavez Day	City Hall Offices Closed
Monday, May 30	Memorial Day	City Hall Offices Closed
Monday, July 4	Independence Day	City Hall Offices Closed
Monday, September 5	Labor Day	City Hall Offices Closed
Friday, November 11	Veterans Day	City Hall Offices Closed
Thursday, November 24	Thanksgiving Day	City Hall Offices Closed
Friday, November 25	Day After Thanksgiving	City Hall Offices Closed
Saturday, December 24	Christmas Eve	Vacation Credit
Sunday, December 25	Christmas Day	Observed on Monday, December 26
December 27-29	Furlough	City Hall Offices Closed for the Holidays
Saturday, December 31	New Year's Eve	Vacation Credit
Sunday, January 1	New Year's Day	Observed on Monday, January 2