

# LAST MINUTE AGENDA INFORMATION

## 8/01/12 Special Meeting

*(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the August 1, 2012 Regular meeting.)*

**ITEM NO.**      **DESCRIPTION**

<b>6.3</b>	<p><b>CONSIDERATION TO SUBMIT AN ALTERNATIVE INITIATIVE REGARDING MEDICAL MARIJUANA COLLECTIVES. (0430-20 &amp; 0610-95)</b></p> <ul style="list-style-type: none"> <li>a. Attachments 1 through 7               <ul style="list-style-type: none"> <li>1. Medical Marijuana Dispensary Citizen-Drafted Initiative</li> <li>2. Draft Alternative Initiative</li> <li>3. Map of Locational Requirements for Alternative Initiative</li> <li>4. Resolution No. 2012-7241 adding the proposed ordinance relating to Medical Marijuana Collectives to the November 6, 2012 Election</li> <li>5. Resolution No. 2012-7242 setting priorities for filing written arguments and directing the City Attorney to prepare an impartial analysis</li> <li>6. Resolution No. 2012-7243 providing for the filing of rebuttal arguments</li> <li>7. U.S. Attorney Letter to City of Del Mar (July 17, 2012)</li> </ul> </li> <li>b. Information provided by Marcus Boyd</li> <li>c. Information provided by Lorenzo Higley</li> </ul>
<b>7.3</b>	<p><b>ADOPTION OF RESOLUTION NO. SA-12-13 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JANUARY 1, 2013 THROUGH JUNE 30, 2013. (0418-50)</b></p> <ul style="list-style-type: none"> <li>a. Addendum to staff report</li> </ul>
<b>7.4</b>	<p><b>ADOPTION OF RESOLUTION NO. SA-12-14 AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH A LICENSED ACCOUNTANT TO PERFORM A DUE DILIGENCE REVIEW PURSUANT TO HEALTH AND SAFETY CODE SECTION 34179.5. (0418-50)</b></p> <ul style="list-style-type: none"> <li>a. Staff Report and Resolution</li> </ul>



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INITIATIVE PETITION

2012 MAR - CITY MANAGER & CITY CLERK OFFICES  
CITY MANAGER & CITY CLERK OFFICES

To the Honorable Mayor and the Honorable City Council of The City of Imperial Beach, California

We, the undersigned, registered, qualified voters of the City of Imperial Beach, California, hereby respectfully propose the following legislative act be adopted by the City Council or submitted to the registered voters of The City of Imperial Beach for their adoption or rejection, and request that a ballot title and summary be prepared:

NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given of the intention of the person(s) whose name(s) appear(s) hereon to circulate a petition within the City of Imperial Beach for the purpose of amending the Municipal Code of the City of Imperial Beach with the Safe Access Ordinance of Imperial Beach.

SAFE ACCESS ORDINANCE OF IMPERIAL BEACH

WHEREAS voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS the California State Legislature adopted Senate Bill 420, the Medical Marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing patients and primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS the California Attorney General published "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Purposes" in 2008, acknowledging that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with state law; and

WHEREAS crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of a Medical Cannabis Dispensing Collective (MCDC); and complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of sensible regulations; and

WHEREAS California courts upheld the legality of MCDC's under state law, including People v. Hochanadel, 98 Cal.Rptr.3rd 347, and People v. Urziceanu, 132 Cal.App.4th 747;

THEREFORE, BE IT RESOLVED that the City of Imperial Beach does hereby enact the following:

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**Section 1. TITLE**

These provisions of the City of Imperial Beach Municipal Code shall be known as the Safe Access Ordinance of Imperial Beach.

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**Section 2. PURPOSE AND INTENT**

To implement the provision of California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as described by the California Attorney General in "Guidelines For The Security And Non-diversion Of Marijuana Grown For Medical Use," published August 2008, which states in Section IV(C)(1) that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with the guidelines.

To help ensure that seriously ill Californians and residents of the City of Imperial Beach can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate by a physician in accordance with California law.

To help ensure that the qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patients' medical treatments are not subject to arrest, criminal prosecution, or sanction.

To protect citizens from the adverse impacts of unregulated medical cannabis distribution, storage, and use practices.

To establish a new section in the Imperial Beach Municipal Code pertaining to the permitted distribution of medical cannabis in the city of Imperial Beach consistent with state law.

To repeal ordinances 2011-1118 (Amended) and 2011-1119 of the City of Imperial Beach municipal code that pertains to the distribution of medical cannabis in the city of Imperial Beach as to not frustrate the purpose and intent of Proposition 215 and SB. 420.

Nothing in this ordinance purports to permit activities that are otherwise illegal under state and local law.

**Section 3. DEFINITIONS**

"Identification card" means the same as it is defined in California Health and Safety Code Section 11362.7.

"Medical Cannabis Dispensing Collective" or "MCDC" means two or more qualified patients or persons with identification cards who associate, as an incorporated or unincorporated association, within the City of Imperial Beach, in order to collectively or cooperatively provide medical marijuana from a licensed or permitted location pursuant to this Chapter for use exclusively by their registered members, in accordance

with California Health and Safety Code Sections 11362.5 and 11362.7., et seq.

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"Person with an identification card" means the same as it is defined in California Health and Safety Code Section 11362.7.

"Primary caregiver" means the same as it is defined in California Health and Safety Code Section 11362.7.

"Qualified patient" means the same as it is defined in California Health and Safety Code Section 11362.7.

**Section 4. ORDINANCES REPEALED**

- (1) Chapter 4.60 (Medical Marijuana Distribution Facilities) of the Imperial Beach Municipal Code is hereby repealed.
- (2) Chapter 19.61 (Medical Marijuana Distribution Facilities) of the Imperial Beach Municipal Code is hereby repealed.

**Section 5. TAXES AND LICENSING**

- (1) A Business License pursuant to Chapter 4.04 of the City of Imperial Beach Municipal Code shall be required to establish or operate a Medical Cannabis Dispensing Collective. MCDC sales shall be subject to sales tax in a manner required by state law.
- (2) For the purposes of this Section, an application for a license to do business in the City as an MCDC shall be considered by the City to be a license to do business under the laws of the State, and no officer, official, or the City Council shall take any action to deny, revoke or suspend a license to two or more qualified patients or persons with identification cards who associate or seek to associate as an MCDC, except to deny an application for a license to do business that is within 300 feet of a location that already is licensed to do business as an MCDC in the City, to be measured by a straight line between the two locations.

**Section 6. LOCATION**

The location at which an MCDC distributes medical cannabis must meet the following requirements:

- (1) The location must be in a commercial, mixed use or industrial zone appropriate for retail or health care, such as zones C-1, C-3, MU-1, MU-3, C/MU-1 or C/MU-3; and
- (2) The location must not be within a 600 foot radius of a school, as measured in Section 11362.768 of the California Health and Safety Code.

**Section 7. SHERIFF'S DEPARTMENT AND TRAINING**

- (1) Upon passage of this act, any services contract for law enforcement services that the City either enters into or renews, either with the San Diego County Sheriff's Department or any other agency, must

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require the training materials, handbooks, and printed procedures of the contracted law enforcement agency to be updated to reflect the provisions of this ordinance when providing law enforcement under the services contract. These updated materials shall be made available to Sheriff's deputies or other contracted law enforcement officers in the regular course of their training and service, and must be provided prior to Sheriff's deputies or other contracted law enforcement officers in law enforcement services under the contract.

- (2) In the event that the City no longer has a services contract for law enforcement services, the City shall provide for its law enforcement officers the training and materials described in Subdivision 1 of this Section.
- (3) Training materials under this Section shall include guidance to Sheriff's deputies or other contracted law enforcement officers that includes the a statement stating that qualified patients, their primary caregivers, and MCDC's who come into contact with law enforcement shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if they are in compliance with the provisions of this Chapter.

**Section 8. OPERATIONAL STANDARDS**

- (1) Signs displayed on the exterior of the property shall conform to existing regulations;
- (2) The location shall be monitored at all times by a closed circuit video recording system for security purposes. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on the site;
- (3) The location shall have a centrally-monitored alarm system;
- (4) Interior building lighting, exterior building lighting and parking area lighting must be in compliance with applicable regulations, and must be of sufficient brightness 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 40 feet (a distance that should allow a person reasonable action time upon recognition of a viable threat);
- (5) Adequate overnight security shall be maintained so as to prevent unauthorized entry;
- (6) Absolutely no cannabis product may be visible from the building exterior;
- (7) Any beverage or edible produced, provided, or sold at the MCDC containing cannabis shall be so identified, as part of the packaging, with a prominent and clearly legible warning advising that the product contains cannabis and that it is to be consumed only by qualified patients;
- (8) No persons under the age of 18 shall be allowed on site, unless the individual is a qualified patient and accompanied by his or her parent or documented legal guardian;
- (9) At any given time, no MCDC may possess more cannabis or cannabis plants than would reasonably meet the needs of its registered patient members;
- (10) A sign shall be posted in a conspicuous location inside the structure advising; "The diversion of cannabis (marijuana) for non-medical purposes is a violation of state law and will result in membership expulsion. Loitering at the location of a Medical Cannabis Dispensing Collective is grounds for expulsion. The use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery.";

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- (11) No MCDC may provide medical cannabis to any persons other than qualified patients and designated primary caregivers who are active, registered members of the MCDC and whose status to possess cannabis pursuant to state law has been verified. No medical cannabis provided to a primary caregiver may be supplied to any person(s) other than the qualified patient(s) who designated the primary caregiver;
- (12) No outdoor cultivation shall occur at an MCDC location unless it is; a) not visible from anywhere outside of the MCDC property and b) secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;
- (13) No MCDC shall cause or permit the establishment or maintenance of the sale or dispensing of alcohol beverages for consumption on the premises or off-site of the premises;
- (14) No dried medical cannabis shall be stored in structures without at least four walls and a roof, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical cannabis be stored in a safe or vault that is not bolted to the floor or structure of the facility; and
- (15) Medical Cannabis may be consumed on-site only as follows:
  - a. The smoking or vaporizing of medical cannabis shall be allowed provided that appropriate seating, restrooms, drinking water, ventilation, air purification system, and patient supervision are provided in a room or enclosed area separate from other MCDC service areas.
  - b. The maximum occupancy of the on-site consumption area shall meet applicable occupancy requirements.
  - c. The MCDC shall use an activated charcoal filter, or other device sufficient to eliminate all odors associated with medical cannabis use from adjoining businesses and public walkways. The fan used to move air through the filter shall have the capacity sufficient to ventilate the square footage of the separate room or enclosed area in which medical cannabis use is permitted.
- (16) MCDCs must verify that each member (1) is legally entitled to possess or consume medical cannabis pursuant to state law; and (2) is a resident of the State of California.
- (17) All MCDC operators, employees, managers, members, or agents, shall be qualified patients. MCDC operators, employees, managers, members, or agents, shall not sell, barter, give away, or furnish medicine to anyone who is not a qualified patient or primary caregiver, registered as a member of the MCDC, and entitled to possess cannabis under state law.
- (18) MCDCs shall maintain accurate patient records necessary to demonstrate patient eligibility under the law for every MCDC member, including (1) a copy of the valid driver's license or Department of Motor Vehicle identification card, (2) a patient registration form, and (3) a current valid letter of recommendation for the use of medical cannabis written by a state-licensed physician. All patient records shall be kept in a secure location, regarded as strictly confidential.
- (19) Operating hours for MCDC's shall not exceed the hours between 6:00 AM and 11:00 PM daily.

**Section 9. SEVERABILITY**

If any section, sub-section, paragraph, sentence, or word of this ordinance is deemed to be invalid, the

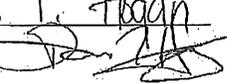
invalidity of such provision shall not affect the validity of any other sections, sub-sections, paragraphs, sentences, or words of this ordinance, or the application thereof; and to that end, the sections, sub-sections, paragraphs, sentences, and words of this ordinance shall be deemed severable.

**A STATEMENT OF THE REASONS OF THE PROPOSED ACTION AS CONTEMPLATED IN THE PETITION IS AS FOLLOWS:**

The citizens of the City of Imperial Beach seek to enact the Safe Access Ordinance of Imperial Beach to ensure that seriously ill Californians and residents of the City of Imperial Beach can obtain and use cannabis for medical purposes, a right guaranteed to them by the Compassionate Use Act of 1996 (CUA) and Senate Bill 420 (MMPA). The Safe Access Ordinance of Imperial Beach ensures safe access to medical cannabis for seriously ill citizens of the City of Imperial Beach by enacting regulations and procedures for medical cannabis dispensing collectives and cooperatives, including zoning restrictions and operational requirements.

Michael Ganey Jr 3-5-12  
Proponent #1  Date

162 Daisy Ave Imperial Beach, CA 91932

Dennis J. Hoan 3-5-12  
Proponent #2  Date

749 Seacoast Dr. Imperial Beach, CA 91932

MICHAEL W. DENNISON. 05 MAR 2012  
Proponent #3 Michael W. Dennison Date

962 Georgia St. Imperial Beach, CA 91932

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9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, MICHAEL DENNISON, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

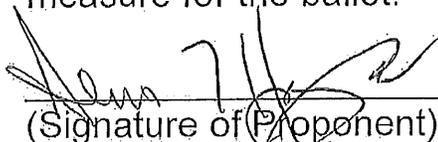
Michael W. Dennison  
(Signature of Proponent)

Dated this 05 day of MARCH, 2012

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9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, Dennis T. Hagan, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

  
\_\_\_\_\_  
(Signature of Proponent)

Dated this Mar 5 day of Mar, 2012

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CITY MANAGER &  
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9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, Michael Gorney Jr, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

  
\_\_\_\_\_  
(Signature of Proponent)

Dated this 14<sup>th</sup> day of March, 2012

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INITIATIVE ORDINANCE

AN ORDINANCE OF THE PEOPLE OF THE CITY OF IMPERIAL BEACH TO ALLOW ONE MEDICAL MARIJUANA COLLECTIVE FACILITY WITHIN THE CITY

CITY MANAGER & CITY CLERK OFFICES

THE PEOPLE OF THE CITY OF IMPERIAL BEACH DO ORDAIN AS FOLLOWS:

SECTION 1. It is the purpose of this ordinance to balance the needs of those residents of the City for access to medical marijuana and the needs and concerns of residents concerned about the unchecked proliferation of medical marijuana dispensaries and the need to hold medical marijuana collectives responsible for ensuring proper and safe operations of their enterprises.

SECTION 2. The City Council was reluctant to place this ordinance before the voters and is only doing so in response to a citizen-drafted initiative, which would allow more medical marijuana dispensaries within the City of Imperial Beach than this ordinance would allow. The City of Imperial Beach in no way condones any marijuana-related activity. Any and all certificates, clearances or licenses issued by City employees or agents of the City under this ordinance are ministerial in nature and are only actions taken as a result of this voter-approved ordinance.

SECTION 3. Pursuant to the vote of the people of the City of Imperial Beach, Ordinance No. 2011-1118, including Chapter 4.60 of the Imperial Beach Municipal Code, is hereby repealed.

SECTION 4. Pursuant to the vote of the people of the City of Imperial Beach, Ordinance No. 2011-1119, including Chapter 19.61 of the Imperial Beach Municipal Code, is hereby repealed.

SECTION 5. Chapter 4.64 (Medical Marijuana Collective Facilities) is added to the Imperial Beach Municipal Code to read as follows:

“Section 4.64.010 Definitions.

- A. "Primary Care Giver" has the same meaning as defined by state law.
- B. "Qualified Patient" has the same meaning as defined by state law.
- C. "Medical Marijuana Collective" or "Collective" means any association or combination of persons collectively or cooperatively cultivating and/or storing marijuana.
- 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 licensed clinic;
- 2. A licensed health facility;

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

E. "Marijuana" has the same meaning as defined by Health and 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 and Safety Code Section 11362.5(e), other relevant statutes and court decisions.

G. "Responsible Person(s)" means any member of any cooperative or collective involved in a Medical Marijuana Collective or involved in a Medical Marijuana Collective Facility, any employee or volunteer at any such facility, any independent contractor who works on any premises owned, leased, or used by the cooperative or collective for marijuana production or distribution purposes who is involved in the manufacture or distribution of the cooperative or collective's marijuana, or any member of any board of directors or similar body governing a cooperative or collective.

H. "Applicant" or "Applicants" means those persons who are completing and executing the Application for a Medical Marijuana Collective Facility Inspection Certificate ("Inspection Certificate").

I. "Public Safety Director" and "Sheriff" are used interchangeably in this ordinance, and these terms include the Public Safety Director, the City Manager, the Sheriff, or any of their designees.

**4.64.020 Inspection Certificate.**

A. No Medical Marijuana Collective Facility shall operate in the City of Imperial Beach without a valid Medical Marijuana Collective Facility Inspection Certificate ("Inspection Certificate") issued by the Public Safety Director to the Medical Marijuana Collective Facility.

B. The Public Safety Director is authorized to adopt procedures for processing Inspection Certificate applications and these shall be substantially the same procedures as are used for Medical Marijuana Collective Facility Operating Compliance Certificates for the County of San Diego under Title 2, Division 1, Chapter 25, Section 21.2503 of the San Diego County Code of Regulatory Ordinances. Appeals from denials of applications for Inspection Certificates shall be processed in accord with Chapter 1.18 of this code.

C. The form of application for an Inspection Certificate shall be developed by the Public Safety Director and it shall be substantially the same form as is used for Medical Marijuana Collective Facility Operating Compliance Certificates for the County of San Diego under Title 2, Division 1, Chapter 25, Section 21.2503 of the San Diego County Code of Regulatory Ordinances. At a minimum, the form of application shall require the applicant(s) to provide sufficient information deemed necessary by the Public Safety Director to make an initial determination that:

1. The Applicant(s) will not be operating a Medical Marijuana Collective Facility in violation of state law and this ordinance, and

2. The Applicant(s) is or are the owner(s) of the property for which the Inspection Certificate is sought or have the written permission of the owner(s) of the property for which the Inspection Certificate is sought.

D. As a condition for obtaining an Inspection Certificate, the Applicant must show proof that the location does not violate the provisions of Chapter 19.63 of this code, and a building permit (including a tenant improvement permit) has been applied for if required by the California Building Code, as it shall be amended from time to time, and any amendments or modifications thereto adopted by the City of Imperial Beach.

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 Medical Marijuana Collective Facility with the knowledge of any Responsible Person(s).

2. That the Medical Marijuana Collective Facility, the Medical Marijuana Collective and its members will comply with all provisions of this Municipal Code, state law, and the California Attorney General Guidelines adopted pursuant to the Medical Marijuana Program Act pertaining to marijuana.

F. An Inspection Certificate issued pursuant to this section shall be valid only for the address for which it was issued.

G. Any Medical Marijuana Collective Inspection Certificate Applicant shall also pay a fee, to be set by resolution of the City Council, for the purposes of paying the costs of processing applications and renewals (which will consist of the review, inspections, and processing by any affected City Departments), for paying the costs of the Sheriff and any other City personnel to conduct ongoing enforcement operations and to cover other enforcement and administrative adjudication costs.

H. The Applicant(s) shall provide to the Public Safety Director along with a completed application and fee for the Inspection Certificate and evidence that any required building permit (including a tenant improvement permit) issued by the Community Development Department has passed final inspection and occupancy approval has been issued by the Fire Marshal before the Inspection Certificate can be effective. Any clearances provided by the Community Development Department and the Fire Marshal are solely with respect to the safe occupancy of the site; no such clearances shall be deemed approvals of the activity to be conducted by the Medical Marijuana Collective Facility.

I. For purposes of facilitating the provisions of this ordinance, a Medical Marijuana Collective that is not a natural person must have a unique identifying name that will be entered onto the application for an Inspection Certificate.

J. The application for an Inspection Certificate shall designate and identify all Responsible Persons. The designated Responsible Person(s) shall include the Applicant(s).

K. An Inspection Certificate shall not be issued where a Responsible Person has a felony conviction.

L. Each Inspection Certificate is valid for twelve (12) months from the date of issuance. No sooner than ninety (90) days and no later than forty-five (45) days prior to the expiration of an Inspection Certificate, a Medical Marijuana Collective Facility shall file an application for a renewal of its Inspection Certificate. If it fails to apply for a renewal of its Inspection Certificate at least forty-five (45) days prior to its current Inspection Certificate's expiration date, the Medical Marijuana Collective Facility shall cease to conduct business immediately upon expiration of its certificate, and other Applicants may seek to be the one (1) collective authorized to do business in the City of Imperial Beach.

M. No Inspection Certificate is transferable to any other person or for use at any other location than as specified on the application.

N. If any new person joins the Medical Marijuana Collective after the Inspection Certificate has been issued, the application must be amended within three (3) business days of the person joining the Medical Marijuana Collective. Any such modification shall include any cost-recovery fees established by resolution, and the new member shall be subject to a background check to ensure compliance with this Chapter 4.64.

O. No Medical Marijuana Collective may operate, and no person may be present at any location where a Medical Marijuana Collective is operating, unless the Medical Marijuana Collective has a valid Inspection Certificate.

P. An Inspection Certificate may be revoked under any of the following circumstances:

1. The Medical Marijuana Collective Facility is in violation of any provision of Chapter 4.64 or Chapter 19.63 of this code.

2. The Medical Marijuana Collective Facility is in violation of any other provision of local or state law.

Q. Revocations may be triggered by a notice of violation which expressly indicates that revocation is sought.

R. Instead of seeking revocation, a notice of violation may seek a suspension of an Inspection Certificate.

S. A revocation or suspension will not take effect until after hearing and decision by a neutral hearing officer pursuant to Chapter 1.18 of this code.

T. A hearing officer conducting a hearing pursuant to Chapter 1.18 may either affirm the penalty indicated in the notice of violation, reverse the penalty, reduce the penalty, or impose and stay a penalty for a probationary period of up to three years, and may condition staying the penalty on the Medical Marijuana Collective Facility meeting additional conditions of operation.

U. Nothing in this ordinance nor any other section of this chapter shall limit any other means of enforcing the provisions of the Imperial Beach Municipal Code or any other law against a Medical Marijuana Collective, its property, or its members provided in this code or under state law.

**4.64.030 Infrastructure Requirements for Medical Marijuana Collective Facilities.**

Unless a more stringent standard is required by federal, state, or local law, including building codes and other similar laws, the following requirements apply to any Medical Marijuana Collective Facility and are prerequisites to obtaining an Inspection Certification:

A. A working, 24-hour centrally monitored alarm system approved by the Sheriff is required.

B. Closed Circuit Television (CCTV) video monitoring shall be installed that meets the following criteria:

1. Continuous twenty-four (24) hour operation and recording with minimum archival period of fourteen (14) days on all required cameras.

2. 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.

3. 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.

4. All Responsible Persons shall ensure that all CCTV recordings shall be immediately 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.

5. To prevent tampering, all recorders shall be kept in a secure location and all recordings shall be reliably date and time stamped.

C. 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.

D. Windows vulnerable to intrusion by a vehicle must be protected by bollards or landscaping grade separation reasonably sufficient to prevent such intrusion.

E. For buildings in which a Medical Marijuana 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 Medical Marijuana Collective Facility is located in a building with other tenants, the Medical Marijuana 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.

F. A Medical Marijuana Collective Facility shall be designed, constructed, and operated such that no area or portion where marijuana is stored is visible from the exterior; however, the entrance shall be fully visible from the public street or building frontage.

G. Exterior landscaping within ten (10) feet of any building in which a Medical Marijuana Collective Facility is located shall be free of locations which could reasonably be considered places where a person could conceal themselves considering all relevant factors of the location, including natural or artificial illumination.

H. All interior, exterior, and parking areas shall be illuminated at a minimum of 1.00 foot-candle, maintained and evenly distributed at floor level.

I. An operational automatic fire sprinkler system, designed in compliance with NFPA 13, consistent with the California Fire Code and other state laws as they shall be amended from time to time, and approved by the Fire Marshal, shall be provided in buildings and portions thereof used as a Medical Marijuana Collective Facility.

J. All Responsible Persons shall ensure that all parking facilities for a Medical Marijuana Collective Facility conform to Sections 19.48.050 and 19.63.050 of this code.

K. A Medical Marijuana Collective Facility shall have a single plainly identified primary entrance/exit site that is visible from all places in any public or common areas.

L. 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.

M. Any aluminum door shall be fitted with steel inserts at the lock receptacles.

N. Any outward-opening doors shall be fitted with hinge stud kits, welded hinges, or set-screw hinge pins.

O. Panic exit hardware shall be of "push-bar" design.

P. Double doors shall be fitted with three-point locking hardware and push-bars approved by the Fire Marshal.

Q. 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.

R. All glass doors or doors with glass panes shall have shatter-resistant film affixed to prevent glass breakage, or other, more impervious protection approved by the Sheriff.

#### **4.64.040 Operating Requirements.**

A. The hours of operation of a Medical Marijuana 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 (18) are allowed at, in, or on a Medical Marijuana Collective Facility, unless such individual is a qualified patient and accompanied by his/her licensed attending physician, parent or documented legal guardian.

C. In order to facilitate verification that a Medical Marijuana Collective Facility is operating in a manner that is not in violation of state law and this code, the following records must be maintained at the Medical Marijuana Collective Facility at all times and be made immediately available for inspection by any law or code enforcement officer during regular hours of business or outside these hours at a reasonable time:

1. A record identifying all current Qualified Patient members of the Collective associated with the Medical Marijuana 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 Medical Marijuana 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 Medical Marijuana 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 Medical Marijuana 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 Medical Marijuana Collective Facility must at all times be physically labeled with information which, used in conjunction with the record required by Section 4.64.040(C)(4) of this code, will allow for ready identification of the specific Collective member who is the source of the marijuana.

6. All marijuana at the Medical Marijuana 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 Medical Marijuana 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 Medical Marijuana 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
- e. If marijuana was involved, the Collective member who was source of the marijuana.

8. A legally binding agreement, signed by each member of the Collective associated with the Medical Marijuana Collective Facility and who is a source of marijuana to the Medical Marijuana Collective Facility. 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, and home and emergency telephone numbers. The form shall be in substantially the same format as is required under Title 2, Division 1, Chapter 25, Section 21.2505(c)(8) of the San Diego County Code of Regulatory Ordinances.

- 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 forty-eight (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.

9. A record showing the identification of the Responsible Persons for the Collective by name, home address and telephone number.

10. A document identifying the names of the Responsible Persons and their emergency contact telephone numbers.

D. The total quantity of marijuana located at any Medical Marijuana 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. No on-site cultivation of marijuana is allowed at the Medical Marijuana Collective Facility. All marijuana must have as its source a member or members of the Medical Marijuana Collective Facility.

F. Only marijuana as herein defined is allowed at the Medical Marijuana Collective Facility. Food or drink containing marijuana may be sold at the Medical Marijuana Collective Facility if clearly labeled as containing marijuana, however no food or drink containing marijuana may be prepared at the Medical Marijuana Collective Facility. The Medical Marijuana Collective Facility shall obtain all necessary permits to sell or serve food products containing marijuana and comply with all regulations applicable to the sale or distribution of food, or any food products containing marijuana.

G. No smoking or any other consumption or ingestion of marijuana is allowed at a Medical Marijuana Collective Facility.

H. Only persons who are members of the Collective that is associated with a Medical Marijuana 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 Medical Marijuana Collective Facility.

I. Medical Marijuana Collective Facilities shall be available for inspection by the Sheriff or his/her designee, the Community Development Director or his/her designee, the Fire Chief/Marshal or his/her designee, or any other law enforcement officer acting within the course and scope of his or her duties at all times during operating hours and upon reasonable notice during non-operating hours.

J. A Medical Marijuana Collective Facility shall have on its premises, posted in a prominent location, a copy of its Inspection Certificate.

K. A licensed, uniformed security guard shall be present at a Medical Marijuana Collective Facility at all times during hours of operation.

L. Each patient shall be assigned one, and no more than one, serial number by the Medical Marijuana Collective. Any document prepared or maintained by any Responsible Person which in any manner relates to any marijuana or financial transaction between that person and any Responsible Person or the Medical Marijuana Collective or relating to records showing permission to use medical marijuana shall contain both the patient's name and the serial number. All Responsible Persons are responsible for ensuring compliance with this requirement. All Responsible Persons shall ensure that the Medical Marijuana Collective Facility maintains a current list noting each patient with each patient's serial number.

M. It shall be unlawful for any Medical Marijuana Collective Facility to sell, deliver, or otherwise provide marijuana at any location other than at the location at which the Medical Marijuana Collective Facility has a business license pursuant to a fixed location.

N. It shall be unlawful for the Medical Marijuana Collective Facility to allow for any licensed medical doctor or any other doctor to provide medical marijuana evaluations or recommendations within the physical premises of the Medical Marijuana Collective Facility.

O. Any person obtaining marijuana at a Medical Marijuana Collective Facility must enter the facility to obtain it. No drive-through medical marijuana transactions are permitted.

P. No alcoholic beverages are allowed at a Medical Marijuana Collective Facility, and it shall be unlawful for any Responsible Person to allow alcoholic beverages to be present at a Medical Marijuana Collective Facility.

**Section 4.64.050 Facility Limits; Naming.**

A Collective must have a unique identifying name, identified on the Inspection Certificate Application, for purposes of tracking membership and facilities.

**Section 4.64.060 Licenses Required.**

It shall be unlawful for a Medical Marijuana Collective Facility to operate without a City of Imperial Beach business license and State Board of Equalization Seller's Permit. The business license

shall not be issued until the Inspection Certificate has been obtained by the Applicant. The provisions of Chapter 4.04 of this code are applicable to Medical Marijuana Collective Facilities in this chapter except to the extent that they are inconsistent with this chapter.

**Section 4.64.070 Exemption for Small Scale Medical Marijuana Collectives.**

The provisions of this chapter and any other chapter addressing Medical Marijuana Collective Facilities in this code do not apply to the following Medical Marijuana Collective Facilities:

1. A Medical Marijuana 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 and Safety Code section 11362.77, where only cultivation occurs, and where no exchanges involving marijuana or reimbursements for marijuana occur.

2. A Medical Marijuana 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 involving marijuana or reimbursements for marijuana occur.

SECTION 6. Section 19.26.020.A of Chapter 19.26 of the Imperial Beach Municipal Code (C-1 General Commercial Zone) is hereby amended to read as follows:

**“19.26.020. Permitted Uses**

A. The following commercial uses (excluding light manufacturing, manufacturing or industrial uses) shall be permitted subject to subsections C and D of this section as appropriate:

1. Stores, shops and offices supplying commodities or performing services for residents of the City as a whole such as retail food stores, restaurants, department stores, specialty shops, banks, business or professional offices and other financial institutions, personal service enterprises, hotels and motels;

2. Any other retail business or service establishment which the planning commission finds to be consistent with the purposes of this chapter and which will not impair the present or potential use of adjacent properties, excluding those listed under subsection B below.

3. Residential dwelling units may be permitted above the first floor at a maximum density of one unit per every one thousand square feet of lot area, subject to the approval of a conditional use permit and subject to subsections B, C and D of this section as appropriate.

4. Short-term rentals.

5. Medical Marijuana Collective Facilities, pursuant to the provisions of Chapter 19.63 and Chapter 4.64 of this code.”

SECTION 7. Chapter 19.63 (Medical Marijuana Collective Facilities) is added to the Imperial Beach Municipal Code to read as follows:

**“19.63.010 Definitions.**

Unless otherwise specified, the definitions in Chapter 4.64 of this code apply to this chapter.

**19.63.020 Medical Marijuana Collective Facilities Prohibited Except Where Expressly Permitted.**

Notwithstanding any other provision of law, including Section 19.26.020 of this code as it shall be amended from time to time, no person shall cause or permit the establishment, operation, enlargement or transfer of ownership of a Medical Marijuana Collective Facility in any zone or property other than on properties abutting or fronting on Palm Avenue/State Route 75 within the City limits which are within the C-1 and/or the C/MU-1 zones.

**19.63.030 Number and Separation Requirements.**

A. No more than one (1) Medical Marijuana Collective Facility shall operate in the City of Imperial Beach. The first business to complete the process under Chapter 4.64, including obtaining an Inspection Certificate and business license, will be the one business in operation in the City of Imperial Beach, until that business ceases operations or its permits expire, whichever is later. If the first business ceases to exist or its permits are no longer valid, the first subsequent business to complete the process indicated in this subdivision and Chapter 4.64 shall be the sole business in operation in the City of Imperial Beach.

B. A Medical Marijuana Collective Facility shall not be allowed or permitted upon any parcel, any portion of which would be, at the time of establishment of the Medical Marijuana Collective Facility, within any of the following:

1. 500 feet of a parcel containing a church, park, playground, recreation center, day care or preschool;

2. 600 feet of a parcel containing a public school as defined and measured in compliance with Health and Safety Code Section 11362.768; and

3. 200 feet of any parcel that is denominated as an R-1-6000, R-1-3800, R-3000-D, R-3000, R-2000, or R-1500 zone, or any other area that is primarily residential in character, as evidenced by letter designation in the zoning law of the City.

C. The distance between a Medical Marijuana Collective Facility and the parcels containing the uses listed in subsection B above shall be measured in a straight line, without regard for intervening structures, from any parcel line of the real property on which the Medical Marijuana 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.

**19.63.040 Signage.**

Exterior signage shall conform to the requirements of Chapter 19.52 of this code.

**19.63.050 Parking.**

A Medical Marijuana Collective Facility shall conform to the requirements of Section 19.48.050 of this code and shall be considered to be "Retail stores not otherwise listed" for purposes of that section.

**19.63.060 Physical Appearance.**

The exterior appearance of the Medical Marijuana Collective Facility's 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 of property values within the immediate area.

**19.63.070 Design Review Board.**

Notwithstanding any other provision of this code, any issue involving a Medical Marijuana Collective or Medical Marijuana Collective Facility is outside the jurisdiction of the Design Review Board.”

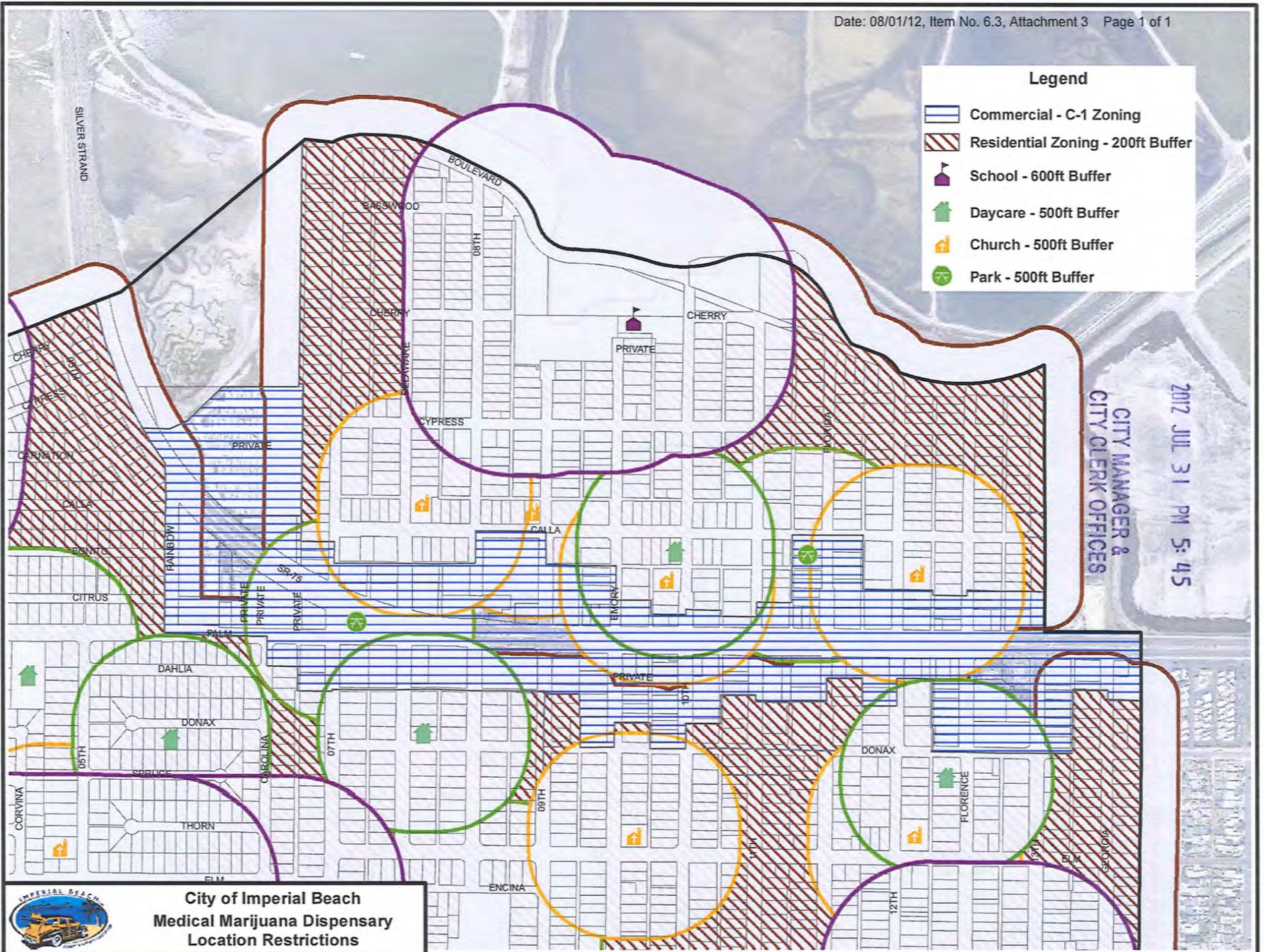
SECTION 8. This ordinance is inconsistent with and intended as an alternative to any initiative ordinance which would regulate medical marijuana in the City of Imperial Beach presented to the voters at the November 2012 general election. If this ordinance and any such other initiative ordinance are both passed by a majority voting thereon, then the one with the most votes shall prevail and only the prevailing ordinance shall take effect.

SECTION 9. If any provision of this ordinance is held to be invalid or preempted by any court of competent jurisdiction or if any provision requiring approval by the California Coastal Commission is rejected or modified by the California Coastal Commission, this entire ordinance shall be declared invalid and Ordinance No. 2011-1118 and Ordinance No. 2011-1119 shall take immediate effect.

SECTION 10. This ordinance shall not become operative until all portions of the ordinance which require approval by the California Coastal Commission receive such approval.

### Legend

-  Commercial - C-1 Zoning
-  Residential Zoning - 200ft Buffer
-  School - 600ft Buffer
-  Daycare - 500ft Buffer
-  Church - 500ft Buffer
-  Park - 500ft Buffer



### City of Imperial Beach Medical Marijuana Dispensary Location Restrictions

RESOLUTION NO. 2012-7241

2012 JUL 31 PM 5:45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2012, A PROPOSED ORDINANCE RELATING TO THE REGULATION OF MEDICAL MARIJUANA COLLECTIVES.**

**WHEREAS**, a General Municipal Election for Tuesday, November 6, 2012, has been called by Resolution No. 2012-7217, adopted on June 20, 2012; and

**WHEREAS**, at the City Council meeting of July 18, 2012, the City Council voted to place a citizen-drafted initiative regarding medical marijuana dispensaries on the November 2012 ballot and to request that City Staff prepare an alternative ordinance to regulate medical marijuana collectives to consider placing on the November 2012 ballot; and

**WHEREAS**, a copy of the alternative ordinance is attached as Exhibit "A"; and

**WHEREAS**, the City Council desires to submit the proposed alternative ordinance to the voters at the City's next regular municipal election (November 6, 2012).

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

1. That pursuant to the requirements of the laws of the State of California, there has been called and ordered to be held in the City of Imperial Beach, California, on Tuesday, November 6, 2012, a General Municipal Election for the purpose of electing two Members of the City Council.
2. That the City Council orders submitted to the voters at said General Municipal Election, the following question:

Shall the ordinance permitting one medical marijuana collective along Palm Avenue/State Route 75 within the C-1 zone, setting operational rules, and repealing the City's prohibition on medical marijuana dispensaries with more than three members be adopted?	Yes
	No

3. That the Ordinance to be placed before the voters is attached as Exhibit "A" hereto. The City does not request the Registrar to print the entire text of the ordinance in the voter information materials. That the ballots to be used at the election shall be in form and content as required by law.

4. That the City Clerk is authorized, instructed and directed to procure and furnish any and all election materials that may be necessary in order to properly and lawfully conduct the election.

5. That the City requests for this measure to be treated by the County of San Diego pursuant to Resolution No. 2012-7217, approved on June 20, 2012, wherein the City: requested that the County agree to consolidate the General Municipal Election with the Statewide General election; requested that the Registrar of Voters of the County of San Diego canvass the returns and hold the election as if it were only one election with one form of ballot; requested that the

Board of Supervisors issue instructions to the Registrar of Voters to take any and all steps for the holding of the consolidated election; and agreed to reimburse the County for any additional costs to consolidate the election.

6. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

8. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 1st day of August 2012, by the following vote:

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

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

**ATTEST:**

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

RESOLUTION NO. 2012-7242

2012 JUL 31 PM 5:45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A PROPOSED ORDINANCE RELATING TO THE REGULATION OF MEDICAL MARIJUANA COLLECTIVES AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS**

**WHEREAS**, a General Municipal Election is to be held in the City of Imperial Beach, California, on November 6, 2012, at which there will be submitted to the voters the following question:

Shall the ordinance permitting one medical marijuana collective along Palm Avenue/State Route 75 within the C-1 zone, setting operational rules, and repealing the City's prohibition on medical marijuana dispensaries with more than three members be adopted?	Yes
	No

**WHEREAS**, Elections Code section 9280 authorizes the City Council to order the City Attorney to prepare an impartial analysis of the city measure qualifying for a place on the ballot; and

**WHEREAS**, Elections Code section 9282 authorizes the filing of written arguments for and against measures placed on the ballot by petition, with priority determined according to state law.

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

1. Ballot arguments shall be accepted for and against this measure in the manner required by law. The City Council authorizes any and all members of the City Council to file or sign a written argument in favor or against City measure(s), pursuant to Elections Code sections 9282 and 9287. Regardless of how any given Council Member voted on any resolution pertaining to the proposed measure, any Council Member may sign or file an argument in favor of or against the ordinance. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk, in accordance with Elections Code section 9286(b), after which no arguments for or against the City measure may be submitted to the City Clerk. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of Argument as supplied by the City Clerk.

2. That the City Clerk is directed to transmit a copy of the proposed ordinance to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the proposed ordinance, pursuant to Elections Code section 9280. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 1st day of August 2012, by the following vote:

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

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

**ATTEST:**

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

RESOLUTION NO. 2012-7243

2012 JUL 31 PM 5:45  
 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES

CITY MANAGER & CITY CLERK OFFICES  
 WHEREAS, a General Municipal Election is to be held in the City of Imperial Beach, California, on November 6, 2012, at which there will be submitted to the voters the following question:

Shall the ordinance permitting one medical marijuana collective along Palm Avenue/State Route 75 within the C-1 zone, setting operational rules, and repealing the City's prohibition on medical marijuana dispensaries with more than three members be adopted?	Yes
	No

and;

WHEREAS, Section 9285 of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments for city measures submitted at municipal elections.

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

1. That, pursuant to section 9285 of the Elections Code of the State of California, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of any argument against, and copies of the argument against to the authors of any argument in favor. The author or a majority of the authors of an argument may prepare and submit rebuttal arguments not exceeding 250 words or may authorize, in writing, any other person or persons to prepare, submit, or sign the rebuttal argument.
2. That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.
3. That the provisions of Section 1 shall apply only to the election to be held on November 6, 2012, and shall then be repealed.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 1st day of August 2012, by the following vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC  
 CITY CLERK

Date: 8/1/12 Item No. 6-3  
 Last Minute Agenda Information





U.S. Department of Justice

ATTACHMENT 7

LAURA E. DUFFY  
United States Attorney  
Southern District of California

(619) 557-5690  
Fax (619) 546-0720

2012 JUL 31 PM 5: 45

CITY MANAGER &  
CITY CLERK OFFICES

San Diego County  
Federal Office Building  
880 Front Street, Room 6293  
San Diego, California 92101-8893

Imperial County Office  
516 Industry Way, Suite C  
Imperial, California 92251-7501

July 17, 2012

Ms. Leslie Devaney  
City Attorney  
City of Del Mar  
STUTZ ARTIANO SHINOFF & HOLTZ, APC  
2488 Historic Decatur Road, Suite 200  
San Diego, CA 92106

Re: **The City of Del Mar Medical Marijuana Ballot Initiative**

Dear Ms. Devaney,

This letter acknowledges receipt of your office's request dated June 26, 2012, concerning the Department of Justice's guidance on investigations and prosecutions in states and cities that authorize the medical use of marijuana. This letter is written to clarify the U.S. Department of Justice's guidance on this issue.

The United States Congress has determined that marijuana is a controlled substance, and it has placed marijuana on Schedule I of the Controlled Substances Act, 21 U.S.C. § 801, *et. seq.* (the "CSA"). As such, growing, distributing, and possessing marijuana, in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities. Moreover, those who engage in financial transactions involving the proceeds of such activities may also be in violation of federal money laundering statutes and other federal financial laws.

As stated in the October 2009 Ogden Memorandum, "the prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority" of the Department. This Department's commitment to the enforcement of the CSA was reiterated in the June 2011 Cole Memorandum which advised that the prosecution of business enterprises that unlawfully cultivate, distribute, or sell marijuana remains a core priority, regardless of state law. The Cole Memorandum is consistent with, and a further explanation of, the Ogden memorandum.

Both the Ogden and Cole Memoranda state that the Department of Justice will likely not focus its limited resources on the prosecution of seriously ill individuals who use marijuana as part of a medically recommended treatment regimen consistent with state laws, or on their individual caregivers. The Cole Memorandum further clarifies that the "term 'caregiver'...means just that: *individuals* providing care to individuals with cancer or other serious illnesses." (Emphasis added).

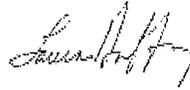
Date: 8/1/12 Item No. 6-3  
Last Minute Agenda Information

Ms. Leslie Devaney  
City Attorney  
Re: The City of Del Mar Medical Marijuana Ballot Initiative  
July 17, 2012  
Page 2

You raised concerns with respect to the citizen-drafted City of Del Mar Compassionate Use Dispensary Regulation and Taxation Ordinance ("Ordinance") which has qualified with sufficient signatures to be placed on the November 2012 ballot in the City of Del Mar, California. Although the Department does not offer advisory opinions, as indicated above, enterprises engaged in the cultivation, manufacture, and sale of marijuana directly violate federal law. Accordingly, individuals and organizations that participate in the unlawful cultivation and distribution of marijuana could be subject to civil and criminal remedies. State and City employees who conduct activities mandated by the Ordinance are not immune from liability under the CSA. The United States Attorney's Office (USAO) will evaluate all potential civil and criminal enforcement actions on a case-by-case basis in light of the priorities of the Department of Justice and the USAO's available resources.

I hope that this letter assists the City of Del Mar in making informed decisions about the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



LAURA E. DUFFY  
United States Attorney

For Immediate Release: July 30th, 2012

# Medical Marijuana Patients Get Their Day in Federal Court with the Obama Administration

2012 JUL 31 AM 8:41

D.C. Circuit to hear oral arguments this October in lawsuit challenging marijuana's federal classification

CITY CLERK OFFICES

Washington, D.C. -- Late last week, the United States Court of Appeals for the D.C. Circuit agreed to hear oral arguments in *Americans for Safe Access v. Drug Enforcement Administration*, a lawsuit challenging the federal government's classification of marijuana as a dangerous drug with no medical value. Ten years after the Coalition for Rescheduling Cannabis (CRC) filed its petition, the courts will finally review the scientific evidence regarding the therapeutic value of marijuana. The D.C. Circuit is scheduled to hear oral arguments on October 16th at 9:30am.



"Medical marijuana patients are finally getting their day in court," said Joe Elford, Chief Counsel with Americans for Safe Access, the country's leading medical marijuana advocacy group. "This is a rare opportunity for patients to confront politically motivated decision-making with scientific evidence of marijuana's medical efficacy," continued Elford. "What's at stake in this case is nothing less than our country's scientific integrity and the imminent needs of millions of patients."

ASA filed its lawsuit in January, challenging the July 2011 Drug Enforcement Administration (DEA) denial of the CRC petition, which was filed in 2002. The DEA is the final arbiter on petitions to reclassify controlled substances, but other agencies are also involved in the review process. Patient advocates claim that marijuana is treated unlike any other controlled substance in that rescheduling petitions are encumbered by politics and therapeutic research is subjected to a unique and overly rigorous approval process.

The announcement of oral arguments comes just weeks after a study was published in *The Open Neurology Journal* by Dr. Igor Grant one of the leading U.S. medical marijuana researchers, claiming that marijuana's Schedule I classification is "not tenable." Dr. Grant and his fellow researchers concluded it was "not accurate that cannabis has no medical value, or that information on safety is lacking." The study urged additional research, and stated that marijuana's federal classification and its political controversy are "obstacles to medical progress in this area." Marijuana's classification as a Schedule I substance (along with heroin and morphine) is based on the federal government's position that it has "no currently accepted medical use in treatment in the United States."

For more than a year, the Obama Justice Department has been escalating its attacks in medical marijuana states, including dozens of new federal indictments and prosecutions. Though U.S. Attorneys often claim that the accused have violated state law in some way, defendants are prevented from using any medical evidence or a state law defense in federal court. If the rescheduling lawsuit is successful and marijuana is reclassified, federal defendants will then gain the basis for a medical necessity defense.

The ASA appeal brief asserts that the federal government has acted arbitrarily and capriciously in its efforts to deny marijuana to millions of patients throughout the U.S. ASA argues in its brief that the DEA has no "license to apply different criteria to marijuana than to other drugs, ignore critical scientific data, misrepresent social science research, or rely upon unsubstantiated assumptions, as the DEA has done in this case." ASA is urging the court to "require the DEA to analyze the scientific data evenhandedly," and order "a hearing and findings based on the

<http://americansforsafeaccess.org/article.php?id=7260>

Date: 8/1/12 Item No. 63  
Last Minute Agenda Information

scientific record." The panel of judges assigned to hear oral arguments includes Circuit Judges Henderson and Garland, and Senior Circuit Judge Edwards.

Seventeen states and the District of Columbia have adopted medical marijuana laws that not only recognize the medical efficacy of marijuana, but also provide safe and legal access to it. Since the CRC petition was filed in 2002, an even greater number of studies have been published that show the medical benefits of marijuana for illnesses such as neuropathic pain, multiple sclerosis, and Alzheimer's. Last year, the National Cancer Institute, a division of the federal Department of Health and Human Services, added cannabis to its list of Complementary and Alternative Medicines, pointing out that it's been therapeutically used for millennia.

*AFI: Several patient-plaintiffs are available for interviews*

#### **William Britt**

Mr. Britt is a 52-year-old resident of Long Beach, California, who developed polio as a child, which caused him to have scoliosis, a fused left ankle, shortened left leg, and bone degeneration in his left hip. Mr. Britt also suffers from epilepsy, depression and insomnia, and uses marijuana to treat chronic pain in his leg, back, and hip. Marijuana has reduced Mr. Britt's seizures and depression, and helps him sleep. Although Mr. Britt has taken prescription medication such as Marinol, Robaxin, Soma, and Xanax, none has proven as effective as marijuana.

#### **Michael Krawitz**

Mr. Krawitz is a 49-year-old resident of Elliston, Virginia, who suffered an automobile accident in 1984 while serving in the United States Air Force. Mr. Krawitz has been rated by the United States Department of Veterans Affairs (VA) as being totally and permanently disabled. Mr. Krawitz uses marijuana to treat chronic pain and trauma associated with his accident. He also uses marijuana to treat central serous retinopathy. However, because of Mr. Krawitz's medical marijuana use, he has been denied pain treatment by the VA.

#### **Steph Sherer**

Ms. Sherer is a resident of Washington, D.C. and the founder and Executive Director of Americans for Safe Access (ASA). In April of 2000, Ms. Sherer suffered a physical attack that has caused her to suffer from a condition that produced inflammation, muscle spasms, pain throughout her body, and decreased mobility in her neck. Because of multiple pain medications she was prescribed, Ms. Sherer suffered kidney damage. After her doctor recommended medical marijuana, Ms. Sherer successfully reduced her inflammation, muscle spasms, and pain. This prompted Ms. Sherer to found ASA in April of 2002 to share what she learned about the therapeutic value of marijuana and to change public policy.

#### **Further information:**

D.C. Circuit announcement of oral

arguments: [http://AmericansForSafeAccess.org/ASA\\_v\\_DEA\\_Oral\\_Arguments.pdf](http://AmericansForSafeAccess.org/ASA_v_DEA_Oral_Arguments.pdf)

ASA appeal brief: [http://AmericansForSafeAccess.org/downloads/CRC\\_Appeal.pdf](http://AmericansForSafeAccess.org/downloads/CRC_Appeal.pdf)

DEA denial of CRC petition: [http://AmericansForSafeAccess.org/downloads/CRC\\_Petition\\_DEA\\_Answer.pdf](http://AmericansForSafeAccess.org/downloads/CRC_Petition_DEA_Answer.pdf)

CRC rescheduling petition: [http://www.drugscience.org/PDF/Petition\\_Final\\_2002.pdf](http://www.drugscience.org/PDF/Petition_Final_2002.pdf)

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# Marijuana

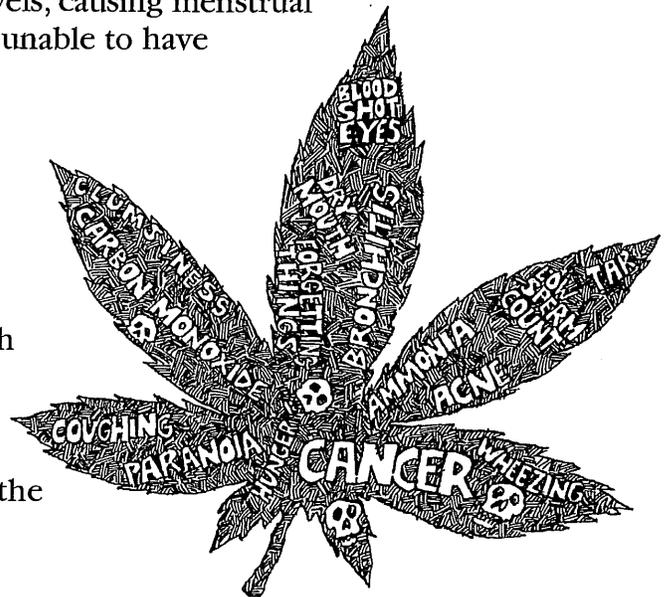


California  
Smokers'  
Helpline  
1-800-NO-BUTTS

2012 JUL 31 AM 6:41

Did you know...

- Today's marijuana is up to 10 times stronger than it was in the 60's and 70's.
- The short-term effects of smoking marijuana include: problems keeping track of time, trouble concentrating, poor coordination, poor short-term memory, hallucinations, paranoia, bloodshot eyes, dry mouth and throat, and hunger.
- Marijuana has some of the same poisons as regular cigarettes, like carbon monoxide (car exhaust fumes), ammonia (in glass cleaner), and hydrocyanic acid (gas chamber poison). And because joints don't have filters, you get 4 times as much tar in your lungs.
- There are 50-70% more cancer causing agents in marijuana than in tobacco.
- Because marijuana is usually smoked by inhaling deeply and holding the breath, the cancer-causing poisons are highly concentrated in the lungs.
- Marijuana causes problems with the reproductive cycles of men and women. It also lessens sexual pleasure. Long-term use can even stop the pleasure completely.
- In men, marijuana may lower sperm production and testosterone levels. Testosterone is the "masculine" hormone which controls hair and beard growth, development of the genitals, muscle mass, and voice changes at puberty.
- In women, marijuana may alter hormone levels, causing menstrual problems. Women may also find themselves unable to have children after long-term regular use.
- Marijuana weakens your immune system, making it harder for your body to protect itself from illness, or heal when you do get sick.
- Smoking marijuana has been connected with more wheezing, coughing, colds, flu, pneumonia, and bronchitis.
- In addition, smoking marijuana can damage the lining of the lungs and bronchial tubes.







STAFF REPORT  
CITY OF IMPERIAL BEACH  
REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY

2012 JUL 31 PM 3:54  
CITY MANAGER &  
CITY CLERK OFFICES

TO: CHAIR AND MEMBERS OF THE SUCCESSOR AGENCY  
FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR  
MEETING DATE: AUGUST 1, 2012  
ORIGINATING DEPT.: SUCCESSOR AGENCY STAFF  
GREG WADE, DEPUTY DIRECTOR  
SUBJECT: ADDENDUM TO STAFF REPORT FOR:

ADOPTION OF RESOLUTION NO. SA-12-13 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JANUARY 1, 2013 THROUGH JUNE 30, 2013

**BACKGROUND:**

Included on page 2 of the ROPS for the period January to June 2013 are two projects funded by Low and Moderate Income Housing Bond Proceeds. These are the Clean and Green project which has been allocated \$380,000 and the Housing Project at 10<sup>th</sup> and Donax by Habitat for Humanity allocated at \$533,000. Both of these projects were allocated this funding by prior Housing Authority action.

Also on the August 1, 2012 Successor Agency Agenda is an item that makes a determination that the use of these excess bond proceeds are (i) consistent with the 2003 Housing Bonds covenant obligations, including requirements relating to tax status, and (ii) that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes.

**DISCUSSION:**

This staff report addendum is to advise the Successor Agency that, in its review of the ROPS for the period of January to June 2013, that, pursuant to Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Clean & Green Program in the amount of \$380,000 and toward the Habitat for Humanity Project in the amount of \$533,000 (i) are consistent with the 2003 Housing Bonds covenant obligations, including requirements relating to tax status, and (ii) that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes.

A-1





AGENDA ITEM NO. 7.4

STAFF REPORT  
CITY OF IMPERIAL BEACH  
REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY

2012 JUL 31 PM 5:46

CITY MANAGER &  
CITY CLERK OFFICES

TO: CHAIR AND MEMBERS OF THE SUCCESSOR AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: APRIL 4, 2012

ORIGINATING DEPT.: MICHAEL MCGRANE, FINANCE DIRECTOR  
GREGORY WADE, DEPUTY DIRECTOR *GW*

SUBJECT: ADOPTION OF RESOLUTION NO. SA-12-14 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AND AUTHORIZING THE RETENTION OF A LICENSED ACCOUNTANT TO PERFORM SERVICES RELATING TO PREPARATION OF THE DUE DILIGENCE REVIEW AND RELATED ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5

**BACKGROUND:**

This report seeks Successor Agency approval and authorization for, and direction to, the Executive Director, or designee, (i) to retain a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, for an estimated cost of \$40,000, to perform the services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5, (ii) to include on the third Recognized Obligation Payment Schedule ("ROPS") and any subsequent ROPS, as necessary, the costs to the Successor Agency for retaining such licensed accountant in order for the Successor Agency to pay for and/or recover all such costs as an enforceable obligation payable from property tax revenues pursuant to AB 26, as amended by AB 1484; and (iii) to take any and all actions and execute any and all documents, including without limitation a professional services agreement with the selected licensed accountant, as are necessary to effectuate the intent of this Resolution and to comply with Health and Safety Code Section 34179.5 on behalf of the Successor Agency.

Health and Safety Code Section 34179.5 of Assembly Bill X1 26 ("AB 26") requires the Successor Agency to employ a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities in furtherance of Health and safety Code Section 34177(d).

The primary purpose of the due diligence review pursuant to AB 26, as amended by AB 1484, is to review and analyze all assets and obligations of the former Imperial Beach Redevelopment Agency ("Redevelopment Agency") and the Successor Agency and, includes without limitation a review of any assets that may have been transferred to public or private entities on and after

January 1, 2011 by the former Redevelopment Agency or the Successor Agency, for the ultimate goal of determining unobligated balances of assets available for distribution to taxing entities as required by Health and Safety Code Section 34177(d). Section 34177(d) requires the Successor Agency to remit unencumbered balances of former Redevelopment Agency funds to the San Diego County Auditor-Controller for distribution to taxing entities, including without limitation, the unencumbered balance of the Low and Moderate Income Housing Fund.

Successor Agency staff estimates the cost to the Successor Agency for retaining a licensed accountant to perform the services required by Health and Safety Code Section 34179.5 at \$40,000.

Pursuant to Health and Safety Code Section 34177.3(b) of AB 26, as amended by AB 1484, the Successor Agency may create enforceable obligations to conduct the work of winding down the Redevelopment Agency, including, without limitation, hiring staff and acquiring necessary professional administrative services. In addition, Health and Safety Code Section 34171(d)(1)(C) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include payments required by obligations imposed by state law, such as the requirement of Section 34179.5 to employ a licensed accountant, and further Health and Safety Code Section 34171(d)(1)(F) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include contracts or agreements necessary for the administration or operation of the Successor Agency.

To obtain and/or recover the costs to the Successor Agency for retaining the licensed accountant as required by Health and Safety Code Section 34179.5, the third ROPS covering the period from January 1, 2013 through June 30, 2013 includes an obligation pertaining to the estimated cost to the Successor Agency in the amount of \$40,000 to retain the licensed accountant to perform services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5. Pursuant to Health and Safety Code Sections 34171(d)(1)(C), 34171(d)(1)(F), and 34177.3(b), the cost to the Successor Agency to retain the licensed accountant shall constitute an enforceable obligation of the Successor Agency payable from the property tax revenues available to be allocated to the Successor Agency by the County of San Diego to pay enforceable obligations pursuant to a valid ROPS, as approved by the Oversight Board and the California Department of Finance. In this regard, pursuant to Health and Safety Code Section 34183(a)(2) of AB 26, as amended by AB 1484, the County of San Diego is required to make a payment of property tax revenues to the Successor Agency by January 2, 2013 for payments to be made toward recognized obligations listed on the third ROPS, as approved by the Oversight Board and California Department of Finance.

**ENVIRONMENTAL DETERMINATION:**

Pursuant to Title 15 of the California Code of Regulations, Section 15378(b)(5), this item is not subject to the California Environmental Quality Act ("CEQA") review because the recommended approvals are not considered a project, and are considered an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5).

**FISCAL IMPACT:**

It is expected that retention of a licensed accountant by the Successor Agency to conduct the required Due Diligence Review will cost approximately \$40,000.

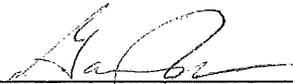
**DEPARTMENT RECOMMENDATION:**

Staff recommends the Successor Agency:

1. Adopt Resolution No. SA-12-14 approving the Retention of a Licensed Accountant to perform the required Due Diligence Review.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

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

Attachments:

1. Resolution No. SA-12-14 Approving Retention of a Licensed Accountant

RESOLUTION NO.SA-12-14

**RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AND AUTHORIZING THE RETENTION OF A LICENSED ACCOUNTANT TO PERFORM SERVICES RELATING TO PREPARATION OF THE DUE DILIGENCE REVIEW AND RELATED ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5**

**WHEREAS**, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

**WHEREAS**, the City Council of the City has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

**WHEREAS**, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

**WHEREAS**, AB X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

**WHEREAS**, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 is to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies; and

**WHEREAS**, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484 establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section

a.4

34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of AB 26 as amended by AB 1484; and

**WHEREAS**, Health and Safety Code Section 34179.5 requires the Successor Agency to employ a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities in furtherance of Health and safety Code Section 34177(d); and

**WHEREAS**, pursuant to Health and Safety Code Section 34177.3(b), the Successor Agency may create enforceable obligations to conduct the work of winding down the Redevelopment Agency, including, without limitation, hiring staff and acquiring necessary professional administrative services; and

**WHEREAS**, Health and Safety Code Section 34171(d)(1)(C) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include payments required by obligations imposed by state law, such as the requirement of Section 34179.5 to employ a licensed accountant, and further Health and Safety Code Section 34171(d)(1)(F) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include contracts or agreements necessary for the administration or operation of the Successor Agency. As of February 1, 2012, pursuant to AB 26, as amended by AB 1484, property tax revenues (former tax increment revenues) are allocated to the County of San Diego and then to the Successor Agency for payment of enforceable obligations of the Redevelopment Agency and the Successor Agency; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177 of AB 26, the Successor Agency (i) prepared its draft Recognized Obligation Payment Schedule ("ROPS") by March 1, 2012, (ii) adopted the draft ROPS on February 15, 2012 for the period ending June 30, 2012, as modified administratively by the Executive Director, (iii) submitted the draft ROPS to the State of California Controller's Office and the State of California Department of Finance by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, (iv) amended the draft ROPS as the first ROPS for submission to the State Controller's Office and the Department of Finance by April 15, 2012 and revised the ROPS to reflect the time period of January 1, 2012 through June 30, 2012, and (v) adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m) of AB 26, as amended by AB 1484, the Successor Agency is required to submit the third ROPS for the period of January 1, 2013 through June 30, 2013, after its approval by the Oversight Board, to the Department of Finance and the County Auditor-Controller no later than September 1, 2012; and

**WHEREAS**, the third ROPS covering the period from January 1, 2013 through June 30, 2013 includes an obligation pertaining to the estimated cost to the Successor Agency in the amount of \$40,000 to retain a licensed accountant to perform services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5; and

**WHEREAS**, pursuant to Health and Safety Code Sections 34171(d)(1)(C), 34171(d)(1)(F), and 34177.3(b), the cost to the Successor Agency in the estimated amount of

a.5

\$40,000 to retain a licensed accountant to perform services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5 shall constitute an enforceable obligation of the Successor Agency payable from the property tax revenues available to be allocated to the Successor Agency by the County of San Diego to pay enforceable obligations pursuant to a valid ROPS; and

**WHEREAS**, pursuant to Health and Safety Code Section 34183(a)(2) of AB 26, as amended by AB 1484, the County of San Diego is required to make a payment of property tax revenues to the Successor Agency by January 2, 2013 for payments to be made toward recognized obligations listed on the third ROPS for the period of January 1, 2013 through June 30, 2013; and

**WHEREAS**, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

**WHEREAS**, this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines; and

**WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have been met.

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

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The adoption of this Resolution is not intended to waive, and shall not constitute a waiver, by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB X1 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB X1 26 and AB 1484, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity, including the right to increase the estimated cost of \$40,000 to the Successor Agency, as necessary, for retaining a licensed accountant to perform services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5.
- Section 3.** The Successor Agency hereby approves, authorizes and directs the Executive Director, or designee, to retain a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, for an

a-b

estimated cost of \$40,000, to perform the services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5.

**Section 4.** The Executive Director, or designee, is hereby authorized and directed to include on the third ROPS and any subsequent ROPS, as necessary, the costs to the Successor Agency for retaining a licensed accountant to perform the services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5, in order for the Successor Agency to pay for and/or recover all such costs as an enforceable obligation of the Successor Agency payable from property tax revenues pursuant to AB 26, as amended by AB 1484.

**Section 5.** The Successor Agency determines that this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**Section 6.** This Resolution shall take effect upon the date of its adoption.

**Section 7.** The Executive Director, or designee, is hereby authorized to take any and all actions and execute any and all documents, including without limitation a professional services agreement with the selected licensed accountant, as are necessary to effectuate the intent of this Resolution and to comply with Health and Safety Code Section 34179.5 on behalf of the Successor Agency.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 1<sup>st</sup> day of August 2012, by the following vote:

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

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

**ATTEST:**

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**JACQUELINE M. HALD, MMC**  
**SECRETARY**

a.7

