



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** June 15, 2011

**ORIGINATING DEPT.:** Jennifer Lyon, City Attorney  
Greg Wade, Community Development Director  
Tom Clark, Public Safety Director

**SUBJECT:** Public Hearing to Consider Ordinances 2011-1118 and 2011-1119 Pertaining to Medical Marijuana Distribution Facilities.

**BACKGROUND:**

In 1996, California voters passed Proposition 215, commonly known as the Compassionate Use Act or CUA (Attachment 4). That initiative immunized seriously ill persons and their primary caregivers from prosecution for growing, possessing, and using medical marijuana, as long as the seriously ill person had a doctor's recommendation for use of medical marijuana. The initiative left many questions unanswered about its proper implementation. The most important of these questions was how the initiative should be squared with federal law, which (in the Federal Controlled Substances Act) prohibits marijuana use, whether for medical purposes or otherwise (Attachment 8).

Years later, the State Legislature passed Senate Bill 420 (commonly known as the Medical Marijuana Program or "MMP"), which took effect January 1, 2004 (Attachment 5). That bill purported to clarify the CUA's rules for medical marijuana in California. The MMP specifies that qualified medical marijuana patients and their primary caregivers are not subject to criminal prosecution solely for associating to collectively or cooperatively grow marijuana for medical purposes. The MMP also required the California Attorney General to develop guidelines governing collective or cooperative medical marijuana activities.

The Attorney General created guidelines in 2008 (Attachment 6), and these guidelines described suggested conditions for the lawful operation of "collective" or "cooperative" activity under the MMP to ensure security, non-diversion of marijuana to illicit markets and compliance with all state and local laws. The Attorney General's guidelines (at page 9) recognize local governments' authority to regulate cooperatives and collectives, requiring them to be in "compliance with all state and local laws."

Since the CUA, and particularly since the MMP, dispensaries started to materialize all over the state, including in San Diego County. Where dispensaries appeared, however, frequently crimes would follow. Dispensaries would frequently be burglarized or robbed, and dispensaries frequently had other drugs and firearms on premises. The crime associated with medical marijuana dispensaries has often alarmed the dispensaries' neighbors (Attachments 8 and 9).

Imperial Beach's Municipal Code has never authorized medical marijuana dispensaries. Dispensaries have never been expressly permitted, so they are generally considered a prohibited use under the Imperial Beach Municipal Code. However, in light of increased medical marijuana dispensary interest in Imperial Beach and questions about whether California's medical marijuana laws can be harmonized with the federal ban on medical marijuana, the City of Imperial Beach adopted Interim Urgency Ordinance Number 2009-1090, a moratorium on dispensaries that would allow the City to study dispensary-related issues in more detail. The City extended the moratorium, through Ordinances 2009-1091 and 2010-1107.

The City used the study period granted by this moratorium to evaluate various approaches to regulating dispensaries. These studies included evaluation of legal cases that have been decided since the moratorium began, evaluating other cities' approaches to dispensaries, and considering what approaches would best balance the needs of medical marijuana patients with the City's need to prevent the deleterious secondary effects associated with dispensaries, including conversion of marijuana to non-medical use. Attached to this report are some key documents that have played a part in this review, including a white paper by the California Police Chiefs Association, which thoroughly documents the negative effects frequently caused by medical marijuana dispensaries (Attachment 8). Periodically, the City Council has considered the issue when staff has presented the Council with updates throughout the process. At the December 15, 2010, City Council meeting, after reviewing some of the City's amassed material for this study, the Council requested that staff prepare an ordinance prohibiting medical marijuana dispensaries in the City of Imperial Beach (Attachments 10 and 11).

Other local jurisdictions have considered medical marijuana dispensary issues as well. Many have adopted bans or moratoria. Still others have zoning codes which effectively prohibit dispensaries by forbidding all land uses not expressly listed in them. The two largest local jurisdictions have decided to allow dispensaries, but under limited circumstances. The County of San Diego only allows them in industrial zones, and then only if they are at least 1,000 feet from residential zoned properties, schools, parks, playgrounds, churches, recreation centers, youth centers, or other dispensaries. The City of San Diego adopted an ordinance recently to only allow dispensaries in industrial zones or commercial zones (with no significant residential uses allowed), with a 600-foot separation requirement from schools, playgrounds, libraries, child care facilities, youth facilities, parks, churches, and other dispensaries.

State law provides that a medical marijuana dispensary cannot be located within a 600 foot radius of schools and specifically provides that a local agency can further restrict the "location or establishment" of a dispensary within its jurisdiction (Attachment 12). Various other bills are pending at the State level related to the location and operation of dispensaries, including Senate Bill 847 which would amend state law to provide that no medical marijuana collective, cooperative, or dispensary shall be located within a 600-foot radius of a residential zone or residential use unless a city or county adopts an ordinance specifically regulating the location of those establishments in relation to residential zones and uses.

## **DISCUSSION:**

The attached ordinances are offered as the best way to balance medical marijuana patients' needs with the health and safety concerns of the general public in the City of Imperial Beach based on the most recent direction from the City Council. They attempt to balance California law, which actively permits medical marijuana for qualified patients, and federal law, which actively prohibits it. What the ordinances prohibit, though, are significant cooperative growth and sale of marijuana within the City through storefront dispensaries.

The ordinances would not ban medical marijuana in the City. Qualified patients and primary caregivers are allowed certain rights to possess, cultivate and use medical marijuana under State law and none of those rights are affected by the proposed ordinances. Further, the ordinances exempt interactions between qualified medical marijuana patients and their primary caregivers, as the definition of a prohibited medical marijuana distribution facility only applies when marijuana is supplied to *two* or more persons.

Several reasons justify this approach. First, the City believes prohibiting large-scale dispensaries is appropriate because of the negative effects dispensaries have on the community's health and safety. Both from the attached white paper and from information obtained from other sources, it is apparent that dispensaries allowed in other communities have frequently attracted criminal conduct, including burglaries and robberies, possession of other drugs, non-medical marijuana possession and consumption, and other secondary impacts. The Sheriff's Department will present further information at the Council meeting related to the secondary effects of dispensaries on surrounding neighborhoods.

Further, large-scale dispensaries are inconsistent with the City's character. The City is a small beach community seeking to attract tourism. Adding dispensaries to the City, with their attendant crime, is inconsistent with this objective. Unlike many other cities which have allowed dispensaries, Imperial Beach does not have industrial zones in which to locate dispensaries or any other zoning with adequate boundaries from sensitive uses. The City, which is only four square miles in area, two of which are entirely occupied by the Tijuana Estuary, has very small commercial zones. The City simply does not have land available that is sufficiently distant from schools, parks, residences and other similar land uses. Accordingly, the City is ill-equipped to provide for dispensaries while providing a safe and clean environment for children and others in the City.

Lastly, the City does not have sufficient personnel to provide the necessary levels for monitoring and regulating dispensaries to ensure security, non-diversion of marijuana to illicit markets and compliance with all State and local laws as is required pursuant to the Attorney General's guidelines.

City Staff has created a map to assist the Council in considering this issue (Attachment 13). The attachment shows that if marijuana dispensaries were permitted no closer than 600 feet from schools, churches, and parks, and 500 feet from residences, there would be no site available in the General Commercial (C-1) Zone. The 500 feet from residential zoned properties is half that required by the County and the 600 foot separation is consistent with San Diego's requirement related to schools, parks, churches and other facilities previously mentioned. If the City were to allow dispensaries in the General Commercial (C-1) Zone, the City's ordinance would be more permissive of dispensaries than either the County or City of San Diego's ordinances. Nonetheless, even by relaxing standards significantly, any dispensary in the C-1 Zone would be located close to residential areas or other sensitive land uses. This map shows that there is no adequate location for a dispensary in the City of Imperial Beach consistent with maintaining the health, safety, and welfare of the City's residents.

As noted in Attachment 7, these proposed ordinances would not deprive City residents of access to dispensaries. There is no shortage of dispensaries near the City to which residents have easy access (Attachment 7). Further, qualified patients and primary caregivers are allowed under state law to cultivate marijuana.

There are two ordinances involved with this action. Ordinance 2011-1119 regulates land use, and 2011-1118 regulates businesses.

The business license ordinance (Ordinance 2011-1118) will take effect thirty (30) days after approval at its second reading (Attachment 1). The business license ordinance defines a "medical marijuana distribution facility" and provides specific exceptions to the definition for certain state licensed medical and care facilities. Further, it prohibits the operation or establishment of a medical marijuana distribution facility within the City limits.

The zoning ordinance (Ordinance 2011-1119) will take effect upon approval by the Coastal Commission (Attachment 3). The zoning ordinance has been circulated (pursuant to California Code of Regulations, Title 14, Section 13515) for public review from April 14, 2011 through May 26, 2011, following the processes required for a Local Coastal Plan amendment, allowing for a 45-day review period prior to this Council meeting. No public comments through this review process have been received to date. Upon passage, the zoning ordinance will be submitted for review and approval by the California Coastal Commission. Additionally, if Council approves the introduction of the zoning ordinance at this meeting, then on July 6, 2011, Council will need to adopt a resolution to certify that the zoning ordinance complies with the Coastal Act and shall be submitted to the Coastal Commission for approval (Attachment 2).

These ordinances do not provide for criminal enforcement. Those who violate the ordinances can still face administrative citations and fines, civil penalties, civil lawsuits, and nuisance abatement actions.

Several attachments to this staff report include various documents submitted by members of the public for Council's consideration (Attachments 14-21).

**ENVIRONMENTAL DETERMINATION:**

Pursuant to Title 14 of the California Code of Regulations, section 15061(b)(3), these ordinances are exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**FISCAL IMPACT:**

None.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the Mayor and City Council hold the public hearing and consider the attached ordinances. If Council chooses:

1. Receive this report;
2. Receive public comments;
3. Mayor calls for the introduction of Ordinance No. 2011-1118 (Business ordinance), "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING TITLE 4 (BUSINESS LICENSING AND REGULATION) OF THE IMPERIAL BEACH MUNICIPAL CODE BY ADDING CHAPTER 4.60 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES)";
4. City Clerk reads title of Ordinance No. 2011-1118;
5. Motion to dispense first reading of Ordinance No. 2011-1118 and set the matter for adoption at the next regularly scheduled City Council meeting;
6. Mayor calls for the introduction of Ordinance No. 2011-1119 (Zoning ordinance), "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ADDING CHAPTER 19.61 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE AND REPEALING ORDINANCE 2010-1107";
7. City Clerk reads title of Ordinance No. 2011-1119; and
8. Motion to dispense first reading of Ordinance No. 2011-1119 and set the matter for adoption at the next regularly scheduled City Council meeting.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

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

Attachments:

1. Ordinance No. 2011-1118 (Business ordinance)
2. Draft July 6, 2011 Coastal Commission Resolution
3. Ordinance No. 2011-1119 (Zoning ordinance)
4. Proposition 215 (the Compassionate Use Act)
5. Senate Bill 420 (the Medical Marijuana Program)
6. Attorney General Guidelines
7. Nearby Dispensary Locations
8. California Police Chiefs Association: *"White Paper on Marijuana Dispensaries"*
9. Adverse Secondary Effects Summary
10. December 15, 2010 Staff Report: Item No. 6.4 – Consideration of Medical Marijuana Regulation
11. December 15, 2010 Minutes for Item No. 6.4
12. AB 2650
13. Map of Sample Dispensary Buffers
14. E-mail Correspondence received from Roy Gage, dated May 31, 2011
15. E-mail Correspondence received from Jon Sullivan, dated June 1, 2011 and attachment listing cities and counties w/ illegal store front ordinances
16. Letter from Washington State Governor Christine Gregoire, dated April 13, 2011
17. Letter from United States Attorneys Jenny Durkan and Michael Ornsby, dated April 14, 2011
18. 263 Identical letters in support for medical cannabis facilities in Imperial Beach (258 from residents of Imperial Beach; 2 with PO Boxes in Imperial Beach; 3 from outside of Imperial Beach)
19. Article by John Ingold and Nancy Lofholm, The Denver Post, dated 1/24/11
20. Information submitted by Marcus Boyd entitled *"Medical Cannabis Dispensing Collectives and Local Regulation"*
21. E-mail Correspondence received from Monica Moore, dated June 6, 2011
22. E-mail Correspondence received from Diego Di Maria, dated June 9, 2011 (Note: The document referenced in the correspondence is Attachment No. 6.)