

## ORDINANCE NO. 2011-1119

**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.**

**WHEREAS**, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety ("H&S") Code Section 11362.5 *et seq.*); and

**WHEREAS**, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

**WHEREAS**, on January 1, 2004, the "Medical Marijuana Program" ("MMP"), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature purporting to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP; and

**WHEREAS**, the CUA expressly anticipates the enactment of additional local legislation, providing that "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code section 11362.5); and

**WHEREAS**, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported, and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The City Council reasonably anticipates that the City of Imperial Beach will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and

**WHEREAS**, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that at least 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165>; and

**WHEREAS**, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)). The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

**WHEREAS**, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMP and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMP; and

**WHEREAS**, the City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the CUA and the MMP also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal. App. 4th 1383, 1386-1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

**WHEREAS**, the City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain illegal under the federal Controlled Substances Act ("CSA") (*Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588); that the federal courts have recognized that despite California's CUA and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1); and

**WHEREAS**, the City Council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

**WHEREAS**, the tension between state and federal laws governing marijuana has created confusion about what authority cities have regarding the regulation of medical marijuana; and

**WHEREAS**, the City Council has discussed the adverse effects associated with medical marijuana dispensaries as shown in the December 15, 2010 City Council discussion, staff report and attachments related to proposed medical marijuana dispensary regulations which are incorporated by reference and relied upon in approving this Ordinance; and

**WHEREAS**, the City Council has been concerned about the adverse effects associated with medical marijuana dispensaries and has discussed such effects adopting a moratorium on August 19, 2009 (Ord. No. 2009-1090) and extending it twice pursuant to applicable law (Ord. No. 2009-1091 and Ord. No. 2010-1107) and such ordinances are incorporated by reference and relied upon in approving this Ordinance; and

**WHEREAS**, the City of Imperial Beach, with a population of under 30,000, is one of the smallest cities in San Diego County; and

**WHEREAS**, the City of Imperial Beach is only about four (4) square miles in size, with two (2) square miles occupied by a marine estuary; and

**WHEREAS**, the City of Imperial Beach lacks industrial zones or any other location in the City that is subject to development which is separated adequately from residential neighborhoods, schools, and other similar sensitive land uses inconsistent with medical marijuana distribution facilities; and

**WHEREAS**, there are several medical marijuana distribution facilities in portions of the City of San Diego near the border with the City of Imperial Beach and the County of San Diego has regulations which allow medical marijuana distribution facilities to which citizens of Imperial Beach can go to obtain medical marijuana if necessary; and

**WHEREAS**, pursuant to Government Code section 65300 *et seq.*, the City of Imperial Beach has adopted a General Plan which, among other things, supports economic development within the City of Imperial Beach; and

**WHEREAS**, medical marijuana dispensaries of the variety seen in some of the other cities discussed above are contrary to the goals established in the City's General Plan and Local Coastal Program such as Goal 11 "Small Beach Oriented Town" including more specifically:

**Economic Development**

The City shall foster development of a broader tax base to support residents of, and visitors to the City. However, this development must be compatible with the goal of remaining a small, beach-oriented town. Economic activities should focus on generating income through expanded local services, visitor serving uses and ecotourism and research related to the City's natural resources.; and

**WHEREAS**, an ordinance prohibiting medical marijuana distribution facilities and prohibiting the issuance of any land use permits or entitlements for medical marijuana distribution facilities is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Imperial Beach; and

**WHEREAS**, an ordinance prohibiting medical marijuana distribution facilities and prohibiting the issuance of any land use permits or entitlements for medical marijuana distribution facilities conform with and is adequate to carry out the certified land use plan; and

**WHEREAS**, the City Council certifies, pursuant to Coastal Commission Regulation 13551 and Public Resources Code section 30510 that the proposed zoning ordinance amendment establishing a prohibition on medical marijuana distribution facilities conforms with the provisions of the California Coastal Act of 1976 (Public Resources Code Sections 30000 *et seq.*); and

**WHEREAS**, the City Council is mindful of the needs of medical marijuana patients and has crafted this Ordinance in a manner that does not interfere with a patient's ability to produce his or her own medical marijuana or to obtain medical marijuana from a primary caregiver as allowed under applicable State law; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, section 15061(b)(3), that this Ordinance is 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; and

**WHEREAS**, on December 15, 2010, the City Council directed staff to prepare this zoning ordinance and circulate it as necessary to allow for Council consideration prior to expiration of Ordinance No. 2010-1107; and

**WHEREAS**, the City circulated this Ordinance for public review for a period of 45 days pursuant to Title 14 of the California Code of Regulations section 13515 (14 CCR 13515) and California Government Code section 65352 and held a duly noticed public hearing on this Ordinance on June 15, 2011; and

**WHEREAS**, the City Council finds, pursuant to Government Code Section 65860, the proposed Zoning Ordinance Amendment, Ordinance No. 2011-\_\_\_\_\_, to be consistent with the General Plan/Local Coastal Program; and

**WHEREAS**, this is the first submittal of an amendment to the zoning ordinance in this calendar year.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN** as follows:

**Section 1.** The above-listed findings are true and correct.

**Section 2.** Title 19 (Zoning) of the Imperial Beach Municipal Code is amended by adding a new Chapter 19.61 (Medical Marijuana Distribution Facilities) to read as follows:

**"CHAPTER 19.61**

**19.61.010 Definitions.**

**19.61.020 Medical Marijuana Distribution Facilities.**

**19.61.030 Violations--penalty.**

**19.61.010 Definitions.**

"Medical marijuana distribution facility" has the same meaning as in Section 4.60.010 of this Code.

**19.61.020 Medical marijuana distribution facilities.**

A. Medical marijuana distribution facilities are prohibited uses in all zoning districts in the City of Imperial Beach, and no person shall operate or locate a medical marijuana

distribution facility in the City of Imperial Beach. The City shall not issue, approve, or grant any permit, license, or other entitlement for the establishment or operation of a medical marijuana distribution facility in the City of Imperial Beach.

B. This Chapter does not apply where preempted by state or federal law.

**19.61.030 Violations--penalty.**

A. Any use or condition caused or permitted to exist in violation of any provisions of this Chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in this Code.

B. Each violation of this Chapter and each day a violation of this Chapter continues to exist shall be considered a separate and distinct violation.

C. Notwithstanding any other provision in this Code, any person found to be in violation of this Chapter shall not be subject to criminal enforcement remedies as noted in this Code. All other means of enforcement authorized under this Code may be used to address violations of this Chapter, including but not limited to: civil penalties, nuisance abatement, civil actions, and administrative citations.”

**Section 3. Severability.** If any section, subsection, phrase or clause of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**Section 4.** Upon the effective date of this Ordinance (as described in Section 5 below), Ordinance No. 2010-1107 shall be repealed.

**Section 5.** This Ordinance shall take effect upon certification by the California Coastal Commission, but not sooner than thirty (30) days following its passage and adoption by the City Council.

**Section 6.** The City Council hereby finds, based on all the evidence in the record, that the proposed zoning code text amendments are consistent with the general plan goals, policies, and programs and the amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

**Section 7. Appeal Process under the California Code of Civil Procedure (CCP):** The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**Section 8.** The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

**INTRODUCED AND FIRST READ** during a public hearing at a regular meeting of the City Council of the City of Imperial Beach, California, on the 15th day of June, 2011; and