



# CITY OF IRWINDALE

5050 N. IRWINDALE AVE., IRWINDALE CA 91706 • PHONE: (626) 430-2200 • FACSIMILE: 962-2018

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COMMISSIONER

## AGENDA FOR THE REGULAR MEETING OF THE

### PLANNING COMMISSION

DECEMBER 16, 2015

6:30 P.M.

IRWINDALE CITY HALL / COUNCIL CHAMBER

**Spontaneous Communications:** The public is encouraged to address the Planning Commission on any matter listed on the agenda or on any other matter within its jurisdiction. The Planning Commission will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The Planning Commission will hear public comments on matters not listed on the agenda during the Spontaneous Communications period.

Pursuant to provisions of the **Brown Act**, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may request from staff to investigate and/or schedule certain matters for consideration at a future Commission or City Council meeting.

**Americans with Disabilities Act:** In compliance with the ADA, if you need special assistance to participate in a Commission meeting or other services offered by this City, please contact City Hall at (626) 430-2200. Assisted listening devices are available at this meeting. Ask the Deputy City Clerk if you desire to use this device. Upon request, the agenda and documents in the agenda packet can be made available in appropriate alternative formats to persons with disabilities. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

**Note:** Staff reports are available for inspection at the Planning Department Counter, City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday).



## Code of Ethics

As City of Irwindale Planning Commissioners, our fundamental duty is to serve the public good. We are committed to the principle of an efficient and professional local government. We will be exemplary in obeying the letter and spirit of Local, State and Federal laws and City policies affecting the operation of the government and in our private life. We will be independent and impartial in our judgment and actions.

We will work for the common good of the City of Irwindale community and not for any private or personal interest. We will endeavor to treat all people with respect and civility. We will commit to observe the highest standards of morality and integrity, and to faithfully discharge the duties of our office regardless of personal consideration. We shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

We will inform ourselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand. We will base our decisions on the merit and substance of that business. We will be fair and equitable in all actions, claims or transactions. We shall not use our official position to influence government decisions in which we have a financial interest or where we have a personal relationship that could present a conflict of interest, or create a perception of a conflict of interest.

We shall not take advantage of services or opportunities for personal gain by virtue of our public office that are not available to the public in general. We shall refrain from accepting gifts, favors or promises of future benefit that might compromise our independence of judgment or action or give the appearance of being compromised.

We will behave in a manner that does not bring discredit or embarrassment to the City of Irwindale. We will be honest in thought and deed in both our personal and official lives.

Ultimate responsibility for complying with this Code of Ethics rests with the individual elected official. In addition to any other penalty as provided by law, violation of this Code of Ethics may be used as a basis for disciplinary action or censure of a Commissioner.

These things we hereby pledge to do in the interest and purposes for which our government has been established.

### *IRWINDALE PLANNING COMMISSION*



**A. CALL TO ORDER****B. PLEDGE OF ALLEGIANCE****C. INVOCATION****D. ROLL CALL: Commissioners: Loretta Corpis, Patricia Gonzales, Robert E. Hartman,  
Vice-Chair Richard Chico, Chair Arthur R. Tapia****SPONTANEOUS COMMUNICATIONS**

This is the time set aside for members of the audience to speak on items not on this agenda. State law prohibits any Commission discussion or action on such communications unless 1) the Commission by majority vote finds that a catastrophe or emergency exists; or 2) the Commission by at least four votes finds that the matter (and need for action thereon) arose within the last five days. Since the Commission cannot (except as stated) participate it is requested that all such communications be made in writing so as to be included on the next agenda for full discussion and action. If a member of the audience feels he or she must proceed tonight, then each speaker will be limited to 2 minutes and each subject limited to 6 minutes, unless such time limits are extended.

**1. CONSENT CALENDAR**

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the Commission requests separate action on a specific item. At this time, members of the audience may ask to be heard regarding an item on the Consent Calendar.

**A. Minutes**

Recommendation: Approve the following minutes:

1. Regular meeting of November 18, 2015

**2. NEW BUSINESS****3. OLD BUSINESS****4. PUBLIC HEARINGS****A. TENTATIVE PARCEL MAP NO. 72834 (STEPHEN ROMERO, IMD ENTERPRISES, LLC)**

Request for Approval of a Tentative Parcel Map to Subdivide an Existing Parcel into Three (3) Parcels for Residential Use on Property Located at 4618 Nora Avenue.

Recommendation: Adopt Resolution No. 665(15), Entitled:

A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF IRWINDALE THE APPROVAL OF TENTATIVE PARCEL MAP NO. 72834, TO

ALLOW THE SUBDIVISION OF ONE (1) PARCEL INTO THREE (3) PARCELS ON PROPERTY LOCATED AT 4618 NORA AVENUE IN THE A-1 (AGRICULTURAL) ZONE, SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF

- B. ZONE ORDINANCE AMENDMENT NO. 01-2015 (CITY OF IRWINDALE)  
PROPOSED AMENDMENTS TO CHAPTERS 17.08 AND 17.32 OF THE IRWINDALE MUNICIPAL CODE AND ADOPTION OF A NEW CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES, MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES IN ALL ZONES.

Recommendation: Adopt Resolution No. 669(15), Entitled:

A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF IRWINDALE THE ADOPTION OF AN ORDINANCE TO ADD CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND TO FURTHER PROHIBIT MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES CITYWIDE, AMEND AND ADD DEFINITIONS IN CHAPTER 17.08 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE, AND TO REPEAL SECTION 17.32.015 OF CHAPTER 17.32 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO DELETE DUPLICATIVE PROVISIONS

5. **DISCUSSION ITEMS**
6. **COMMISSIONER COMMENTS**
7. **CITY MANAGER'S REPORT**
8. **COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**
9. **ADJOURN**

AFFIDAVIT OF POSTING

I, Cathy Huicochea, Administrative Secretary, certify that I caused the agenda for the regular meeting of the Irwindale Planning Commission to be held on December 16, 2015 to be posted at the City Hall, Library, and Post Office on December 10, 2015.

***Cathy Huicochea***

Cathy Huicochea  
Administrative Secretary

**IRWINDALE COUNCIL CHAMBER  
5050 N. IRWINDALE AVENUE  
IRWINDALE, CALIFORNIA 91706**

**NOVEMBER 18, 2015  
WEDNESDAY  
6:30 P.M.**

The Irwindale **PLANNING COMMISSION** met in a regular session at the above time and place.

**ROLL CALL:**

**Present:** Commissioners Patricia Gonzales; Robert E. Hartman; Vice-Chair Richard Chico; Chair Arthur R. Tapia

**Absent:** Commissioner Loretta Corpis

**Also present:** Gustavo Romo, Community Development Director; Adrian Guerra, Assistant City Attorney; William Tam, Director of Public Works/City Engineer; Cathy Huicochea, Administrative Secretary; Jeff Tyler, Code Enforcement Officer

**SPONTANEOUS COMMUNICATIONS**

There were no Spontaneous Communications to report.

**1. CONSENT CALENDAR**

**A. PLANNING COMMISSION MINUTES**

The floor was opened for review and approval of the minutes of October 21, 2015. Vice-Chair Chico motioned to approve the minutes as presented.

**MOTION:** Vice-Chair Chico  
**SECOND:** Commissioner Gonzales  
**Ayes:** Commissioner Gonzales, Commissioner Hartman, Vice-Chair Chico, Chair Tapia  
**Noes:** None  
**Abstain:** None  
**Absent:** Commissioner Corpis

**2. NEW BUSINESS**

**A. Introduction of Code Enforcement Officer**

Community Development Director Gus Romo introduced new Code Enforcement Officer Jeff Tyler and gave a short biography on his education, professional background and experience with the City's Planning and Code Enforcement divisions. Director Romo expressed his appreciation for having Officer Tyler on board and that he has been a tremendous help to the department. Having him on limited hours in the past was difficult and now that he is fulltime he is able to concentrate on more significant assignments.

Code Enforcement Officer Tyler greeted the Commission and thanked them for having him. He spoke about his work experience with the City and shared information regarding his current duties in Code Enforcement. He is trying hard to be reactive and spoke about proactive assignments that will soon be implemented. He encouraged the Planning Commission to contact him in the event they notice any unusual activities or possible code violations. The Planning Commission welcomed him and Chair Tapia expressed his pleasure in noticing him making his rounds throughout the community.

**3. OLD BUSINESS**

There were no Old Business items to report.

**4. PUBLIC HEARINGS****A. ZONE CHANGE NO. 01-2015; VARIANCE NO. 02-2015 (PANATTONI DEVELOPMENT COMPANY)**

Director Romo reported that this item is associated with Site Plan and Design Review Permit No. 01-2014 which was recommended for City Council approval by the Planning Commission on October 21, 2015. The project was approved by the City Council on November 11, 2015 for a single tenant building with 133,800 square feet of floor area for property located at 16203-16233 Arrow Highway.

Director Romo shared the following information during his report:

- In addition to the site plan and design review permit, the applicant is now pursuing a variance to increase the building height and a zone change for one of three existing parcels.
- Two parcels are zoned M-1 (Light Manufacturing) and the third parcel on the west side of the property is zoned M-2 (Heavy Manufacturing). The applicant has requested a zone change of the third parcel to M-1 (Light Manufacturing), which will ensure that the applicant will be unable to offer any type of M-2 (Heavy Manufacturing) use.
- Initially the applicant was asked to postpone the site plan and design review and submit it altogether with the variance and zone change requests. However, because of the timeline with two potential users, the applicant is attempting to expedite the project to complete the entitlement process.
- The need for a variance was identified for the building height. Currently the M-1 zone only allows for a maximum height of 35'-0" and the applicant has requested a height of 35'-8" for parapets that will extend the whole length of the building. The increased height is being requested to hide the rooftop equipment. The light industrial user also needs the additional height in order to have the span of the building.
- Two corner tower elements along the frontage will exceed 35'-0' and were approved as part of the site plan and design review. They are allowed as architectural projections within the office area and typically reach heights of 39'-0'; the corner elements for this project will reach up to 39'-2' in height.
- From staff's point of view, the increased height is not really visible to the human eye and although the increase is considered minor, it is still a technicality which needs to be addressed. Most cities will allow for a minor modification process which can be approved administratively for an increase below ten percent. The City's Municipal Code, however, does not currently allow for this type of modification. (Staff plans to include this provision as part of the zoning code update which will be presented in the future.)
- At the City Council meeting of November 11, 2015, the City Council was presented with a building height of 35'-0'. The applicant had been informed beforehand that in order for the City Council to take action he would need to comply with the current code standards since the variance was not being proposed at that time.
- The requested variance is exempt from CEQA pursuant to Section 15.06.1.B.3. As a general rule, the exemption states when it can be seen with certainty that there is no

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possibility the proposal would have a significant effect on the environment that exemption can be made.

- An analysis of the zone change was also presented which included an overview of the property's surrounding zones and uses and staff's findings of fact to support the zone change.

Director Romo completed his report and recommended that the Planning Commission adopt Resolution No. 667(15) granting approval of Variance No. 02-2015 and adopt Resolution No. 668(15) recommending that the City Council approve Zone Change No. 01-2015.

The floor was opened for input and the following issues were discussed:

- A short discussion was held regarding the parapets and corner elements with clarification from staff that the variance only applies to increasing the height of the parapets and not the corner elements which were approved as part of the site plan and design review.
- In response to an inquiry by Chair Tapia regarding an industrial building located behind the cul-de-sac at the end of Morada Street, Director Romo replied that the building is actually located in the City of Azusa. Chair Tapia had questioned which city it was located since the design of the building is very nice and similar to Irwindale's Design Guidelines.

There were no further discussions at this time and the public hearing was opened.

**Mark Payne, Panattoni Development Co. 20411 Southwest Birch St. Suite 200, Newport Beach, CA**

Mr. Mark Payne introduced himself on behalf of the applicant and shared the following information regarding the variance and zone change requests:

- One reason for the height increase is that other cities have higher building heights and allow for 32'-0' clear buildings which means there can be up to 32'-0' inside a building which is considered a very modern standard.
- Better companies desire the best buildings and highest modern standards and the applicant is currently communicating with two companies. One is a Fortune 500 high tech manufacturing company. They have a 32'-0' clear specification and the business is a very low impact use with quiet machinery and very few trucks.
- The second tenant is already situated in Irwindale and is a Biosense Webster/Johnson & Johnson company. This is a great company for the City with a higher than normal number of employees.
- The requested building height is only a 2% increase and again is not really visible to the naked eye.
- The new 63'-0' setback from Morada Street residents is a huge bonus and will provide ample space between the building and the residential area.

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- The main reason for coming before the Planning Commission at this time is because with these types of companies time is of the essence and if timing is prolonged it can essentially break a deal causing businesses to search for other available projects.

There was no further public input and the public hearing was closed. Since there was also no further discussion the floor was opened for a motion.

Commissioner Hartman motioned to adopt Resolution No. 667(15) granting approval of Variance No. 02-2015 and motioned to adopt Resolution No. 668(15) recommending that the City Council approve Zone Change No. 01-2015.

**MOTION:** Commissioner Hartman  
**SECOND:** Commissioner Gonzales  
**Ayes:** Commissioner Gonzales, Commissioner Hartman, Vice-Chair Chico, Chair Tapia  
**Noes:** None  
**Abstain:** None  
**Absent:** Commissioner Corpis

Assistant City Attorney stated for the record that the variance has been approved and there is an appeal period if anyone wishes to appeal and the zone change is a recommendation to the City Council for the City Council's final action.

**5. DISCUSSION ITEMS**

There were no Discussion Items to report.

**6. COMMISSIONER COMMENTS**

**Vice-Chair Chico:**

- Requested an update regarding the existing berm on the western side of the Manning Pit. Public Works Director William Tam addressed the issue and explained that the berm, also referred to as an appendage, is part of the approved operation plan and was constructed for the overburden status of consolidating the soil on the western side of the pit. At the end of the operation the berm will be removed and stockpiling of soil will be relocated to the southeast corner of the pit which is still being worked on. The berm put along the western side is for consolidation purposes and another function of the berm is to seal off noise from truck traffic coming in and out of the site.
- Asked if the Manning Pit berm is within the terms of the existing CUP. Director Tam replied yes and indicated that the CUP approved the operation plan which is subject to the operation of the site. Director Romo added the CUP identifies that activities on the site will be in compliance with all code requirements as well as Public Works requirements; however there is nothing specific which states a berm is allowed. Vice-Chair Chico asked to have something of this nature spelled out in the future with regard to berms and height limitations for berms. A short discussion was also held on a similar situation at the JH Pit.
- Asked for an estimated time of completion for the Manning Pit backfill operation. Director Tam replied that based on the current progress of the quantity of fill coming into the pit, the completion date is expected to be within 12 to 18 months, at which time the entire pit will be filled at street level.

**Chair Tapia:**

- Asked what the outcome will be for the little rock house on Morada Street due to the Arrow Highway project. Director Romo replied that the structure will be demolished as part of the project. Chair Tapia emphasized the historic significance of the rocks and explained they were handpicked and brought in manually to construct the house and it is evident it was quality craftsman work. He asked if it would be possible to have the rocks recycled. Director Romo replied plans have been made to use the rocks to construct a small wall required along the front of the property. In fact, part of the City Council's action to approve the site plan and design review was the addition of a third section of wall in the middle of the property. The wall is expected to be no more than 42 inches high and will extend into three sections along the frontage. A plaque commemorating the existing mission and building on the edge of the property was approved and will be installed on the southeast portion of the property. Chair Tapia indicated he was unaware the rocks would be recycled and was pleased to hear that they will be put to a great use.
- Asked about the six or so homes wedged behind the wash south of the Manning Pit and if they are within Irwindale's jurisdiction. Vice-Chair Chico replied that the homes behind the wash are actually L.A. County owned property. Chair Tapia thought maybe the City granted the property over and was just curious to find out if the homes are actually located in Irwindale.
- Asked why the traffic signal east of Merwin School was installed. Director Tam replied that the traffic signal was installed by L.A. County and they have complete ownership of the traffic signal. The traffic signal was warranted as a result of the required traffic study and the City supported the installation and worked with L.A. County on the project; the City Council also supported the construction but not in a financial sense. The traffic signal was approved due in part to an accident where a pedestrian was struck and killed in the crosswalk where the traffic signal is now located.
- Spoke about signs he has seen displayed throughout the City with businesses advertising that they purchase diabetic strips. He did some research and found that this type of business is actually legal but is also a legal con and it's unfortunate nothing can be done to stop these types of businesses.
- Noticed during the recent Fall Clean-Up that many residences did not have their bulky items tied up properly nor were they stored in bags and did not adhere to specifications in the resident flyer. He asked if the City contracts with Athens and if they were paid for the number of hours it took to complete the task or if it was based solely on the work that was done. He added that items not listed on the flyer were also put out such as bedroom furniture and different sizes of plastic pipes which are difficult to fit in garbage truck buckets. Director Tam replied that the City does have a contract with Athens Disposal which includes pick up of bulky items. These services do not include any additional costs and if items are prepared according to what is indicated in the flyer, the items will be picked up. The quantity of items is irrelevant and this is outlined in the contract. If Athens determines there are items that cannot be picked up the City will be notified. However, Public Works was not notified of any such objections for this last pick up.

**Commissioner Gonzales:**

- Asked if there is an ordinance to display signs on light poles. She has also noticed different signs displayed in the Irwindale Plaza shopping center and is not sure how they are handled since the center is private property. Director Romo replied that advertisement signs are not permitted on poles within the public right of way and added that Officer Tyler does in fact remove signs and banners that are illegally displayed as part of his field work.

Officer Tyler also addressed the inquiry and stated that he purposely removes these types of signs which he sees more of following the weekends; he will also remove them if he receives any complaints. He added some advertisers are now displaying signs at least eight feet high to make them more difficult to reach. In addition, he has informed advertisers they will be fined for any signs and banners that continue to be illegally displayed.

- Asked if there is an ordinance for yard sales and if there is a limit on how many can be held annually. Director Romo replied there is no ordinance in effect for yard sales and they can be held as often as one wants. Also, if a person has a yard sale or a for sale or for rent sign displayed on a fence within their property, the City has no objection. However, according to the code, if the signs are kept up for a long period of time it can be considered an unpermitted sign. He added that a wooden real estate sign is permissible and is exempt since it is considered a real estate sign.

**Commissioner Hartman:**

- Asked if there was any reason why the California state flag is not being flown in front of City Hall and the police department anymore and wondered if it was because the United States flag is currently at half mast. Director Romo replied he was unaware that the state flag had been taken down and will follow up on the matter. He added it's a possibility the United States flag is at half mast because of the recent terrorist attacks in Paris.
- Referenced the potholes from the northbound Irwindale Avenue to the westbound onramp to the 210 freeway. He asked if staff was certain this is still part of the Caltrans improvement project. Director Tam replied that Caltrans is currently working on the freeway ramp and work is also being done to resurface the entire section from Foothill Boulevard to First Street. The timing for the City project has to be delayed until the Gold Line construction is completed which is projected to be before the end of the year or the beginning part of next year. Afterwards, weather permitting, the City's project will begin probably in March or April of next year.

**7. CITY MANAGER'S REPORT**

There were no items to report by the City Manager's office.

**8. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

Community Development Director Romo reported that because the majority of comments and requests brought up at the last meeting involved the need for Code Enforcement intervention, Officer Tyler followed through with inspections and monitoring at various sites and was present to give a report on the work completed.

**A. Code Enforcement Division Response to 10/21/15 PC requests.**

Officer Tyler presented his report for the following sites which included a breakdown of his inspections and daytime and nighttime monitoring and the results from these activities:

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- 16102 Gladstone Street (former Urban Lumber site) – inspection of unpermitted fleet storage;
- 16321 Arrow Highway (Breeder’s Choice) – noise and odor monitoring;
- 4775 Irwindale Avenue (Trammell Crow Industrial Business Park) – inspection of landscape maintenance and possible homeless encampment at southeast area of site;
- 16233 Arrow Highway (former Arrow Automotive site) – inspection of homeless person living onsite;
- 4800 Azusa Canyon Road (Huy Fong Foods) – noise and odor monitoring.

A short discussion was also held regarding Breeders Choice as well as a meeting that has been scheduled between staff and company representatives to discuss the outstanding issues.

**9. ADJOURNMENT**

There being no further business to conduct the meeting was adjourned at 7:32 pm.

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Chair Arthur R. Tapia

**ATTEST:**

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Cathy Huicochea, Administrative Secretary

Approved as presented at the meeting held December 16, 2015.



**CITY OF IRWINDALE  
PLANNING COMMISSION STAFF REPORT**

**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**



**Date:** December 16, 2015 **Agenda Item No. 4-A**

**To:** Honorable Chair and Members of the Planning Commission

**From:** Gustavo Romo, Community Development Director

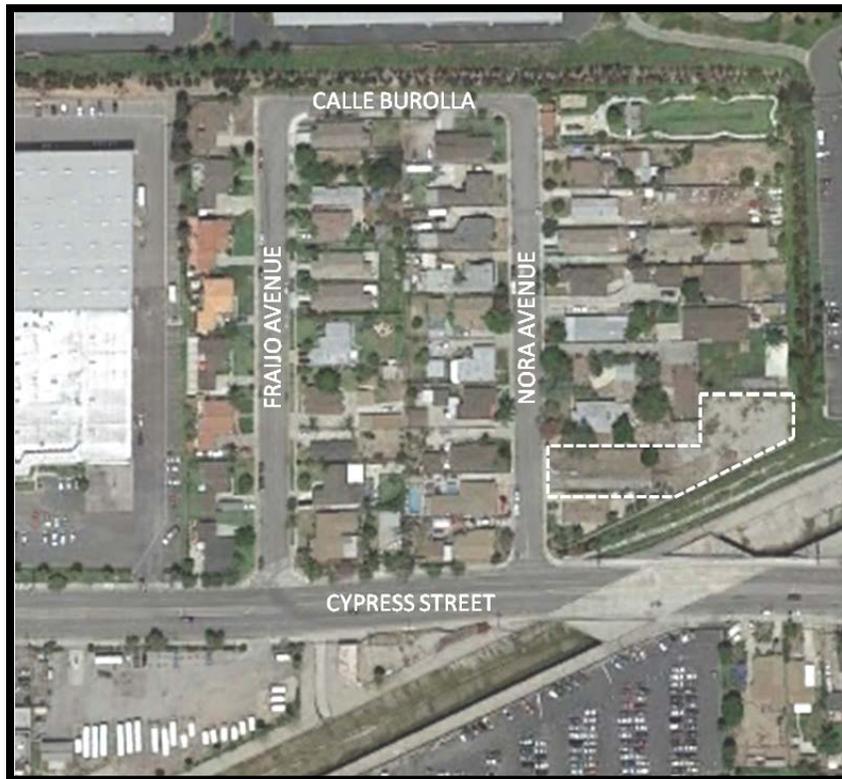
**Project Planner:** Brandi Jones, Associate Planner

**Project:** Mayans Housing Project  
Tentative Parcel Map No. 72834; Three-lot subdivision

**Applicant:** Stephen Romero, IMD Enterprises, LLC

**Property Owner:** City of Irwindale Housing Authority

**Project Location:** 4618 Nora Avenue (APN 8417-002-928)



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**Staff Recommendation:** That the Planning Commission adopt Resolution No. 665(15) recommending that the City Council approve the proposed Tentative Parcel Map No. 72834 subject to the attendant Conditions of Approval.

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## **REQUEST**

Tentative Parcel Map No. 72834 is a request to subdivide an existing parcel into three (3) parcels for residential use. The existing parcel, which is currently vacant, has a total area of approximately 21,612 square feet (0.49± acres). Each of the new parcels will be developed with single-family homes.

## **LOCATION AND SITE HISTORY**

The site was previously occupied by substandard buildings and trailers. On January 7, 1998, a site inspection revealed that the all of the buildings had been demolished and removed. The site has been vacant since.

In 2014, Lot Line Adjustment No. 01-2014 was approved, which modified the northern property line shared with 4622 Nora Avenue. This increased the width of the subject property and changed its shape to create better potential lot configurations. This adjustment did not change the original lot size.

On July 15, 2015, the Planning Commission continued this item to the September 16, 2015 meeting at the request of the Public Works Department due to additional analysis that was needed regarding a dedicated utility maintenance easement. However, before continuing the item, the public hearing was opened and questions and concerns about the proposed project were received from concerned neighbors. As a result, the Irwindale Housing Authority held a community meeting on August 3, 2015 with staff, the applicant and the community. The density and proposed height of the houses were primary concerns. The project was redesigned to a single-story, three-lot subdivision and brought to the September 16, 2015 meeting but no action was taken due to lack of quorum. Therefore, this item was once again continued to tonight's meeting.

## ***Historical Environmental Data***

On December 27, 2007, in accordance with the County of Los Angeles Department of Public Works (LACDPW) Permit No. 550141, HVN Environmental Service Co., Inc. removed one (1) – 1,000 gallon single-wall steel gasoline underground tank, associated piping and dispenser. The tank was installed in 1970, used until 1986 and unused ever since.<sup>1</sup>

Arsenic impacted soil was identified in the area of a wall/berm feature located on the eastern portion of the site. In March 2010, Converse Consultants completed the removal of approximately 80 tons of arsenic impacted soil from the above-mentioned area to depths between 2.5 and 3 feet below ground surface (bgs). Additional assessments and excavations were completed during 2010 and 2011.<sup>2</sup>

Based on the results of the remedial activities, Converse has reached the following conclusions and recommendations:

<sup>1</sup>Underground Tank Closure Report, prepared by HVN Environmental Service Co., Inc. Dated January 4, 2003

<sup>2</sup> Remedial Action Plan, prepared by Converse Consultants. Dated July 18, 2011

1. Arsenic has been removed to an acceptable level for redevelopment of the property. The average arsenic concentration in soils remaining onsite is estimated to be approximately 10 mg/kg, which is less than the cleanup goal of 12 mg/kg.
2. All other reported metals in the soil samples were below their respective health-risk based RSL and CHHSL values.
3. TPH was not reported in any of the confirmation samples analyzed, and concentrations of TPH in soils remaining onsite are below their respective MSSL values.
4. VOCs were not reported in any of the soil samples analyzed, and concentrations in the soil vapor samples are below their respective established CHHSL values.

Based on the conclusions outlined above, the impacted soils identified at the site have been appropriately removed and the removal action objectives of the Workplan have been achieved. Therefore, no further remedial actions appear warranted at the site.<sup>3</sup>

Following excavation of the arsenic-impacted soils, the excavation was backfilled with imported soil. The imported soil was obtained from an Irwindale quarry located at the north end of Irwindale Boulevard in Irwindale, California. The import soil was sampled in general accordance with the DTSC Advisory on Clean Imported Fill Material prior to being transported to the Site.<sup>4</sup>

### **Abbreviations**

BGS = Below Ground Surface

mg/kg = Milligrams per Kilogram

CHHSL-r = California Human Health Screening Levels for Residential Soils

DTSC = Department of Toxic Substances Control

MSSL = Maximum Soil Screening Levels

RSL-r = Regional Screening Levels for Residential Soils

TPH = Total Petroleum Hydrocarbons

VOC = Volatile Organic Compounds

### **GENERAL PLAN AND ZONING**

The site is designated in the General Plan as Residential. The property is currently zoned A-1 (Agricultural), which allows for single-family residential development.

The site is surrounded by the following zones and uses:

<b>Direction</b>	<b>Existing Land Use</b>	<b>Zoning District</b>
<b>North</b>	Single-Family Homes	A-1, Agricultural
<b>South</b>	Single-Family Homes/Big Dalton Wash	A-1, Agricultural
<b>East</b>	Industrial Tilt-Up Buildings/Big Dalton Wash	M-1, Light Manufacturing
<b>West</b>	Single-Family Homes	A-1, Agricultural

<sup>3</sup> Soil Remediation Report, prepared by Converse Consultants. Dated December 30, 2011

<sup>4</sup> Soil Remediation Report, prepared by Converse Consultants. Dated December 30, 2011

## ENVIRONMENTAL REVIEW

The proposed project is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15332 (Class 32; Infill Land Development), which exempts the division of property in urbanized areas that are less than five (5) acres in size. The subject property to be subdivided is only 0.49± acres in size.

## PROJECT DESCRIPTION

The City of Irwindale Housing Authority and IMD Enterprises, LLC are developing single-family housing units through the subdivision of individual parcels and construction of new homes on existing infill lots. This comprehensive development will be known as “Mayans Housing Project.” Each subdivision project will be presented separately to the Planning Commission for consideration. Of the 10 proposed sites to be developed, four consist of subdivisions, which require Planning Commission and City Council approvals. This project represents the last of the subdivisions to come before the Planning Commission for action.

New Home Construction	Number of Units
4618 Nora Avenue	3 (Tentative Parcel Map No. 72834)
4804 Irwindale Avenue	8 (Tentative Tract Map No. 72835)
5130 Irwindale Avenue	1
15848 Juarez Street	2 (Tentative Parcel Map No. 72832)
15808 Hidalgo Street	2 (Tentative Parcel Map No. 72381)
15821 Hidalgo Street	1
Rehab Homes	
4655 Fraijo Avenue	1
16046 Peppertree Lane	1
16161 Peppertree Lane	1
2449 Alice Rodriguez Circle	1
<b>Total</b>	<b>21</b>

This particular subdivision pertains only to the site at 4618 Nora Avenue, a proposed three (3) parcel subdivision.

In accordance with a Disposition and Development Agreement (DDA) entered into by the Irwindale Housing Authority and the applicant on December 18, 2013 to develop affordable housing, IMD Enterprises is required to provide 100% of the homes as affordable units at the following income levels: four (4) or 19% extremely low income, six (6) or 29% very low income, five (5) or 23% low income and six (6) or 29% at moderate income. All of the proposed units in these developments fall into one of these categories, thus making the entire project affordable.

Pursuant to Government Code Section 65915(b)(1) “A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section...”

For this project, the City is providing the land and the applicant, IMD Enterprises, LLC, is developing the housing. The applicant is requesting a concession for three (3) development standards (lot size, front setback, and rear setback), as shown in the table below:

Development Standard	Minimum Requirement	Parcel 1	Parcel 2	Parcel 3
Lot Size Net (sf)	5,000	<b>4,774</b>	5,423	5,599
Lot Size Gross (sf)	5,000	7,712	8,302	5,599
Lot Width (ft)	50	57.51	57.51	115.70
Lot Depth (ft)	N/A	134.43	61.62 – 95.35	63.09 – 95.35
Net Lot Coverage (%)	40	31	32	36
Front Setback (ft)	20	25	41.07	<b>6.6</b>
Rear Setback (ft)	15	38.92	21.10	<b>8.16</b>
Side Setbacks (ft)	5	5 – 22.5	5 – 23.8	5 – 5.1

With the inclusion of the concessions, each proposed lot would be considered a legal lot creation and would not be considered non-conforming. There are also other subdivisions nearby that were approved under the same type of concessions.

### FLOOR PLANS/ELEVATIONS

There are currently three (3) proposed floor plans and elevation combinations as shown in Table 4 below. This proposal will be using Plan 3-A or 3-B.

Summary	Plan 4	Plan 5	Plan 6
Living Area (sf)	1,450	1,450	1,450
Garage (sf)	426	426	426
Porch (sf)	50	77	55
Bedrooms	3	3	3
Bathrooms	2	2	2
Height	16'-6"/Single-story	16'-6"/Single-story	16'-6"/Single-story

### ANALYSIS

In order to recommend that the City Council approve the request for the Tentative Parcel Map, the Planning Commission is required to make each of the following findings:

1. The proposed Application for the subdivision is consistent with the City's General Plan Land Use Designation (Residential), the State Subdivision Map Act, the Zoning Designation and applicable development standards of the A-1 (Agricultural) zone. The concessions for reduced lot size and setback are within the authority of Government Code 65915(b)(1).
2. The subdivision is physically suitable for the proposed type of single-family residential development, as established in the Zoning Code.
3. The subdivision is physically suited for the type of parcel density which requires a minimum 5,000 square-foot lot area in which the lots will vary from 4,774 to 5,599 net square feet pursuant to Government Code 65915(b)(1), allowing deviations from the development standards.
4. The design or proposed improvements of the subdivision will not cause any substantial environmental damage or substantially injure fish, wildlife, or their habitats, or cause serious public health problems in that the Application will create three (3) parcels from one (1) parcel in an area that has been planned for residential

- uses. The subdivision is located in an urbanized area and is not the habitat of fish or wildlife.
5. The proposed Application for the subdivision and proposed improvements will not conflict with public easements for access through, or use of, property within the site, as public streets are provided that will efficiently carry both pedestrian and vehicular traffic throughout each of the proposed subdivided lots.
  6. The design of the proposed Application for the subdivision and the type of improvements are not likely to cause serious public health problems because the existing uses will not be changed by the approval of the Application. Currently, the lot is vacant. Accordingly, there would be no public health impacts by approval of this Application as the impacted soils identified at the site have been appropriately removed.
  7. The subdivision is adequate in size, shape, topography, location, utilities and other factors to accommodate the proposed subdivision because the proposed subdivided lots comply with the City's minimum development standards and can readily connect to existing utilities in the area. The concessions for reduced lot size and setback are within the authority of Government Code 65915(b)(1).
  8. Adequate street access and traffic capacity are available to serve the subdivision, as well as existing and anticipated development in the surrounding area. Currently, the lot is vacant. The Application will not physically alter or intensify these uses, increase traffic or affect street access. The proposed lots will be consistent with the existing neighborhood of single-family homes.
  9. Adequate utilities and public services are available to serve the proposed subdivision, as well as existing and anticipated development in the surrounding area. Currently, the lot is vacant. The Application will not physically alter or intensify these uses or require additional public services.
  10. In accordance with Government Code section 66412.3, approval of this Application shall not intensify the public service needs of residents or impact available fiscal and environmental resources because the previous uses of the property was residential and the creation of three (3) residential lots will not create an impact.

### **RECOMMENDATION**

That the Planning Commission adopt Resolution No. 665(15), recommending that the City Council approve the proposed Tentative Parcel Map with the attendant Conditions of Approval, subject to the stated Conditions of Approval.

### **ATTACHMENTS**

- Exhibit A: Resolution No. 665(15) with Conditions of Approval
- Exhibit B: Tentative Parcel Map No. 72834 & Site Plan/Conceptual Grading
- Exhibit C: Floor Plans/Elevations (for reference purposes only)

**RESOLUTION NO. 665(15)**

**A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF IRWINDALE THE APPROVAL OF TENTATIVE PARCEL MAP NO. 72834, TO ALLOW THE SUBDIVISION OF ONE (1) PARCEL INTO THREE (3) PARCELS ON PROPERTY LOCATED AT 4618 NORA AVENUE IN THE A-1 (AGRICULTURAL) ZONE, SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF**

**A. RECITALS.**

- (i) Stephen Romero (IMD Enterprises, LLC), 22343 La Palma Avenue, Ste. 132, Yorba Linda, CA 92887, the Applicant, has made a request for a Tentative Parcel Map, pursuant to Title 16 of the Irwindale Municipal Code (IMC), to allow the subdivision of one (1) parcel into four (4) parcels on property located at 4618 Nora Avenue (“Subdivision”).
- (ii) The property is zoned A-1 (Agricultural). Hereinafter in this Resolution, the subject Tentative Parcel Map shall be referred to as the “Application.”
- (iii) On July 15, 2015, the Planning Commission conducted a duly noticed public hearing, as required by law, on the Application, took testimony on the Application, and continued the public hearing to the September 16, 2015 Planning Commission Meeting.
- (iv) On August 3, 2015, the Irwindale Housing Authority held a community meeting. The density and proposed height of the houses were primary concerns. As a result, the project was redesigned to a single-story, three-lot subdivision.
- (v) On September 16, 2015, the Planning Commission conducted a duly noticed public hearing but no action was taken due to lack of quorum. Therefore, the project was continued to a date uncertain, at which time it was determined the project would be re-noticed.
- (vi) On December 16, 2015, the Planning Commission conducted a duly noticed public hearing, as required by law, on the Application, closed the public hearing and recommended that the City Council approve the Tentative Parcel Map, subject to the approval of a Resolution, which would detail the specific Conditions under which the Application was approved.
- (vii) All legal prerequisites to the adoption of this Resolution have occurred.

**B. RESOLUTION.**

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

1. The Planning Commission hereby specifically finds that all of the facts set forth in Recitals, Part A, of this Resolution are true and correct.

2. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to the Application, including written staff reports, verbal testimony, development plans, and Conditions of Approval attached hereto as Exhibit "A," this Planning Commission hereby specifically finds as follows:

- a. The proposed Application for the subdivision is consistent with the City's General Plan Land Use Designation (Residential), the State Subdivision Map Act, the Zoning Designation and applicable development standards of the A-1 (Agricultural) zone. The concessions for reduced lot size, front yard setback, and rear yard setback are within the authority of Government Code 65915(b)(1).
- b. The subdivision is physically suitable for the proposed type of single-family residential development, as established in the Zoning Code.
- c. The subdivision is physically suited for the type of parcel density which requires a minimum 5,000 square-foot lot area in which the lots will vary from 4,774 to 5,599 net square feet pursuant to Government Code 65915(b)(1), allowing deviations from the development standards.
- d. The design or proposed improvements of the subdivision will not cause any substantial environmental damage or substantially injure fish, wildlife, or their habitats, or cause serious public health problems in that the Application will create three (3) parcels from one (1) parcel in an area that has been planned for residential uses. The subdivision is located in an urbanized area and is not the habitat of fish or wildlife.
- e. The proposed Application for the subdivision and proposed improvements will not conflict with public easements for access through, or use of, property within the site, as public streets are provided that will efficiently carry both pedestrian and vehicular traffic throughout each of the proposed subdivided lots.
- f. The design of the proposed Application for the subdivision and the type of improvements are not likely to cause serious public health problems because the existing uses will not be changed by the approval of the Application. Currently, the lot is vacant. Accordingly, there would be no public health impacts by approval of this Application as the impacted soils identified at the site have been appropriately removed.
- g. The subdivision is adequate in size, shape, topography, location, utilities and other factors to accommodate the proposed subdivision because the proposed subdivided lots comply with the City's minimum development standards and can readily connect to existing utilities in the area. The concessions for reduced lot size and setback are within the authority of Government Code 65915(b)(1).

- h. Adequate street access and traffic capacity are available to serve the subdivision, as well as existing and anticipated development in the surrounding area. Currently, the lot is vacant. The Application will not physically alter or intensify these uses, increase traffic or affect street access. The proposed lots will be consistent with the existing neighborhood of single-family homes.
- i. Adequate utilities and public services are available to serve the proposed subdivision, as well as existing and anticipated development in the surrounding area. Currently, the lot is vacant. The Application will not physically alter or intensify these uses or require additional public services.
- j. In accordance with Government Code section 66412.3, approval of this Application shall not intensify the public service needs of residents or impact available fiscal and environmental resources because the previous uses of the property was residential and the creation of three (3) residential lots will not create an impact.

3. In accordance with Government Code 65915(b)(1), the lot sizes are authorized to be 4,774 to 5,599 net square feet and front setbacks are authorized to be 6.6' and rear setbacks are authorized to be 8.16'.

4. The Planning Commission hereby specifically finds and determines that, in accordance with the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, and guidelines promulgated thereunder; this Application is exempt from the California Environmental Quality Act (CEQA), pursuant to Categorical Exemption Class 32 (Infill Land Development), Section 15332 of the CEQA Guidelines.

5. Based upon the substantial evidence and conclusions set forth herein above, this Planning Commission hereby recommends that the City Council approve the Application and by this reference incorporates conditions that are deemed necessary to protect the public health, safety and general welfare and are reasonable and proper in accordance with the intent and purposes of Chapters 16 and 17 of the Irwindale Municipal Code.

6. The Secretary shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 16<sup>th</sup> day of December 2015.

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Chairperson

ATTEST:

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Secretary

I, Gustavo Romo, Community Development Director of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a meeting of the Planning Commission of the City of Irwindale held on the 16<sup>th</sup> day of December 2015, by the following vote:

AYES:            COMMISSIONERS:

NOES:            COMMISSIONERS:

ABSENT:        COMMISSIONERS:

ABSTAIN:       COMMISSIONERS:

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Secretary

**EXHIBIT "A"****PLANNING COMMISSION RESOLUTION NO. 665(15)**

**Tentative Parcel Map No. 72834**  
**Stephen Romero**  
**IMD Enterprises, LLC**  
**22343 La Palma Avenue, Ste. 132**  
**Yorba Linda, CA 92887**

**FINAL CONDITIONS OF APPROVAL****A. GENERAL CONDITIONS:**

1. The Applicant shall agree and consent, in writing, to each and every Tentative Parcel Map approval set forth herein within twenty (20) days from the adoption of this Resolution by the Planning Commission approving the Tentative Parcel Map.
2. Plans for any proposed site improvements shall be submitted to the Los Angeles County Fire Department and City Building Department for review and approval prior to the issuance of Building Permits.
3. All graffiti shall be adequately and completely removed or painted over to match the surface within 48 hours of such graffiti being affixed on any structure or fence at the proposed subdivision.
4. The Tentative Parcel Map may be revoked for any violation of or noncompliance with any of these conditions or other codes, regulations or standards enforced by or beneficial to the City of Irwindale in accordance with IMC Section 17.80.140 "Revocation".
5. City inspectors shall have access to the site to reasonably inspect the proposed subdivision during normal working hours to assure compliance with these conditions and other codes.
6. Any and all fees required to be paid to any public agency shall be paid prior to obtaining any permit for this project.
7. All appropriate practices shall be adopted to control dust, odor and vermin.
8. Upon receipt of a complaint related to any condition of approval imposed by this Tentative Parcel Map, the City shall notify the Applicant of the alleged violation, and the Applicant shall commence to cure within ten (10) days after the receipt of the notice.
9. The proposed subdivision shall be maintained free and clear of any accumulations of trash, debris, waste, and combustible and/or flammable materials, other than the related materials specifically authorized under this Tentative Parcel Map.

10. The use and improvements authorized by the Tentative Parcel Map shall conform to the plans as finally approved by the City as conditioned herein, and any appreciable modification as determined by the Director of Community Development shall require the prior approval of the Planning Commission or City Council, as applicable.

**B. COMMUNITY DEVELOPMENT DEPARTMENT**

1. This Tentative Parcel Map is for the subdivision of one (1) parcel into three (3), as shown on the Tentative Parcel Map dated December 10, 2015, located at 4618 Nora Avenue, Irwindale, CA 91706.
2. This Tentative Parcel Map shall expire two (2) years after approval by the City of Irwindale City Council. Upon receipt of written request for extension, the granting body, upon good cause shown by the Applicant, may extend the time limitations imposed by Section 66452.11 "One Time Map Extension" of the 2015 Subdivision Map Act for a period not to exceed two (2) years.
3. The Final Conditions of Approval shall be recorded with the Parcel Map.
4. The Applicant shall defend, indemnify and hold harmless the City of Irwindale, its agents, officers, or employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul, any approval of the City, its advisory agencies, appeal boards, or legislative body concerning Tentative Parcel Map No. 72834. The City will promptly notify the permittee of any such claim, action, or proceeding against the City and will cooperate fully in the defense.
5. The Applicant shall be required to submit plans for future development to the Community Development Department.
6. The front yards of each lot shall be landscaped, subject to the review and approval of the Director of Community Development. A minimum 24-inch box tree shall be included as part of the front yard landscaping, subject to the review and approval of the Director of Community Development.
7. All mechanical equipment such as gas meters, electrical meters, electrical transformers (those not owned by the public utility) or other obstructions will be located either underground or within a designated area built directly into a building and screened with a cabinet door. The location of said utilities/equipment shall be shown in the Site Plan and subject to the approval of the Director of Community Development.
8. Each of the lots with proposed dwelling units shall have a side property line with a 6'-0" high wooden gate, subject to review and approval by the Community Development Department. The existing block wall shall be replaced and/or repaired as determined by a pre-construction site inspection.
9. All proposed block walls shall be decorative and/or match the existing block walls.

10. No wall or fence located within the required front yard setback shall exceed 36 inches in height. Reverse corner lots shall be reviewed on a case-by-case basis.
11. All requirements, specification and restrictions of the Disposition and Development Agreement (DDA), entered into by the City of Irwindale Housing Authority and IMD Enterprises, LLC shall be complied with.
12. The proposed single-family dwelling units shall be "Green Point Rated."

**C. PUBLIC WORKS DEPARTMENT**

1. All matters and improvements shall be consistent with City ordinances, standards, and procedures including Engineering procedures and standards, water company standards, and irrigation and planting standards. The developer is responsible for checking with the staff for clarification of these standards.

**Public Improvements**

2. The driveway serving parcels No. 1, 2 and 3 shall be 20 feet in width to serve as fire lane access roadway and shall have all fire lane and curb parking striping and signage as required by the Fire Department. All driveways shall be constructed in accordance with City Standards and shall meet ADA Standards.
3. No parking signs and or markings shall be provided on both sides of Nora Avenue to support the turning radius for fire apparatus on to the driveway of the parcel map. These improvements shall be design by the developer and be subject to the approval of Public Works Director/City Engineer.
4. The developer shall dedicate a public right of way easement for sidewalk and driveway on the frontage of parcel 1.

**Grading and Drainage**

5. A grading and drainage plan shall be prepared and submitted to the City for review and approval. The grading plan shall include the topography of all contiguous properties and streets and shall provide for the methods of drainage in accordance with all applicable City and County standards. Retaining walls and other protective measures may be required.
6. The catch basin located on Nora Avenue on the frontage of parcel 1 shall be adjusted to driveway grade and a bicycle approved grate shall be installed meeting the required capacity and subject to the approval of Public Works Director/City Engineer.
7. The developer shall comply with the National Pollutant Discharge Elimination System (NPDES) program and shall require the general contractor to implement storm water/urban runoff pollution prevention controls and Best Management Practices (BMPs) on all construction sites in accordance with the City Code. The developer will also be required to submit a Certification for the project and may be

required to prepare a Storm Water Pollution Prevention Plan (SWPPP). Projects over five acres in size will be required to file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). The developer can obtain the current application packet by contacting the SWRCB, Division of Water Quality, at (916) 657-1977 or by downloading the forms from their website at <http://www.swrcb.ca.gov/stormwtr/construction.html>. The project shall also conform to City's Ordinance regarding the requirements for the submittal of a Standard Urban Storm Water Mitigation Plan ("SUSMP"), and the requirements of Low Impact Development ("LID"). The SUSMP includes a requirement to implement Post Construction BMPs to infiltrate the first 3/4" of runoff from all storm events and to control peak-flow discharges. Unless exempted by the Los Angeles Regional Water Quality Control Board, a Covenant and Restriction ensuring the provisions of the approved SWPPP shall also be required.

8. Obtain approval from the Los Angeles Department of Public Works for any storm drain connection to any County owned Storm Drain System.

#### Sewers

9. The developer shall construct an adequate Sewer System to support the development of this parcel map, subject to the approval of Public Works Director/City Engineer, and the County Sanitation District of Los Angeles County.
10. The developer shall dedicate a 20-foot wide access roadway and utility easement that will serve the three parcels.

#### Water

11. Sufficient water supply shall be provided and written proof from the water provider shall be submitted to the Public Works Director/City Engineer for verification. Further, water connections shall not cross adjacent properties without a utility easement.

#### Final Parcel Map

12. Final parcel map shall be prepared and submitted to the Public Works Department for processing. The applicant shall be responsible for all fees associated with the processing of the final map. Applicant shall comply with Los Angeles County's Digital Subdivision Ordinance (DSO) and submit final maps to the City and County in digital format.
13. The developer, under the direction of a certified land surveyor and at no cost to the City, shall install all required property boundary monuments, centerline ties and City monuments subject to the Public Works Director/City Engineer's approval.
14. The easements mentioned above shall be shown on the Final Map.

15. The developer shall provide at no cost to the City, one mylar print of the recorded tract map from the County of Los Angeles Department of Public Works, P.O. Box 1460, Alhambra, CA 91802-1460.

#### Building and Safety

16. Building permits shall be prepared and submitted to the Building and Safety Division and all construction shall be in compliance with the Irwindale Building Code and all applicable regulations.

#### Miscellaneous

17. That upon completion of public improvements constructed by developers, the developer's civil engineer shall submit mylar record drawings and AutoCAD V.2007 drawing files to the office of the City Engineer.

### **D. FIRE DEPARTMENT**

#### Access

1. Fire Department apparatus access shall be extended to within 150 feet of all portions of the exterior walls of any future buildings or structures.
2. Access as noted on the Tentative and the Exhibit Maps shall comply with Title 21 (County of Los Angeles Subdivision Code) and Section 503 of the Title 32 (County of Los Angeles Fire Code), which requires all weather access.
3. All future buildings shall provide approved address numbers. Compliance required prior to occupancy to the satisfaction of the City of Irwindale, Public Works and the County of Los Angeles Fire Code.
4. Provide a minimum unobstructed width of 20 feet, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance "clear to sky" Fire Department vehicular access to within 150 feet of all portions of the exterior walls of the first story of the building, as measured by an approved route around the exterior of the building. Fire Code 503.1.1 & 503.2.1.
5. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved Fire Department turnaround. Fire Code 503.2.5
6. The Final Map shall be submitted to our office for review and approval prior recordation.
7. Fire Department vehicular access roads must be installed and maintained in a serviceable manner prior to and during the time of construction. Fire Code 501.4.

#### Water

8. All hydrants shall measure 6"x 4"x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal.
9. The required fire flow for the public fire hydrants on this residential development is 1250 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand.
10. Verify and flow one existing public fire hydrant at the intersection of Nora Ave. and Cypress Street.
11. Install one-site fire hydrant. The required on-site fire hydrant shall be installed, tested and approved prior to building occupancy. Fire Code 901.5.1 (See attached map for location).
12. Plans showing underground piping for private on-site fire hydrants shall be submitted to the Sprinkler Plan Check Unit for review and approval prior to installation. Fire Code 901.2, County of Los Angeles Fire Department Regulation 7.
13. Approved Automatic Sprinkler Systems in new buildings and structures shall be provided in locations described in Sections 903.2.1 through 903.2.12 of the County of Los Angeles Fire Code.
14. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested, and accepted prior to construction.
15. This project will require an additional review by the Fire Prevention Engineering Unit during the Building Plan Check phase.



**CITY OF IRWINDALE  
PLANNING COMMISSION STAFF REPORT**  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION



**Agenda Item No. 4-B**

**Date:** December 16, 2015

**To:** Honorable Chair and Members of the Planning Commission

**From:** Gustavo Romo, Community Development Director

**Project Planner:** Same as above

**Project:** Zoning Ordinance Amendment No. 01-2015, to adopt An Ordinance of The City Council of the City of Irwindale to Add Chapter 17.110 to Title 17 of the Irwindale Municipal Code to Prohibit the Establishment of Medical Marijuana Dispensaries and to Further Prohibit Marijuana Cultivation and Mobile Marijuana Dispensaries Citywide, Amend and Add Definitions in Chapter 17.08 of Title 17 of the Irwindale Municipal Code, and to Repeal Section 17.32.015 of Chapter 17.32 of Title 17 of the Irwindale Municipal Code to Delete Duplicative Provisions

**Applicant:** City of Irwindale

**Property Owner:** Not Applicable

**Project Location:** All Zones/City-wide

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**Staff Recommendation:** That the Planning Commission waive reading of and adopt Resolution No. 669(15) recommending that the City Council adopt the following Ordinance: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE TO ADD CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND TO FURTHER PROHIBIT MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES CITYWIDE, AMEND AND ADD DEFINITIONS IN CHAPTER 17.08 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE , AND TO REPEAL SECTION 17.32.015 OF CHAPTER 17.32 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO DELETE DUPLICATIVE PROVISIONS

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## **BACKGROUND**

In 2008, the City approved Ordinance No. 624 establishing the prohibition of medical marijuana dispensaries.

Recently, the State legislature enacted the Medical Marijuana Regulation and Safety Act (“MMRSA”) to establish a statewide regulatory system for the licensing and operation of cultivation, processing, transportation, testing, distribution, and use of medical marijuana. The MMRSA consists of three bills: AB 266, AB 243 and SB 643. Among other things, these bills create a dual licensing system (described herein) which allows the State to govern aspects of the operation such as cultivation and mobile delivery unless the City adopts land use regulations prohibiting or allowing these activities or uses.

In keeping with the City’s existing land use regulations – which prohibit medical marijuana dispensaries – the proposed zone change will also prohibit cultivation of marijuana and/or medical marijuana and prohibit the establishment of mobile delivery services by the dispensaries.

Staff and the City Attorney’s office recommend that the Planning Commission recommend approval of Zoning Ordinance Amendment No. 01-2015 to the City Council by adopting Resolution No. 669(15).

## **PROPOSAL**

### Prior Medical Marijuana Regulations

In 1996, California voters adopted the Compassionate Use Act (“CUA”) as a ballot initiative, codified at Health and Safety Code section 11362.5. The CUA provides a limited defense from prosecution for cultivation and possession of marijuana. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153).

In 2004, California Senate Bill (SB) 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA. These new regulations and rules became known as the Medical Marijuana Program (“MMP”), which among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

The California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes. (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.) Rather, the statutes set up limited defenses to state criminal prosecution. The manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act (21 U.S.C. §§ 812, 841, 844).

In 2008, the City Council voted to prohibit medical marijuana dispensaries by adopting Ordinance No. 624. These regulations remain lawful and will not be affected by the

proposed text amendments. On May 13, 2015, the City Council adopted Interim Urgency Ordinance No. 691, which imposed a temporary moratorium on the commercial and industrial cultivation, processing and distribution of medical marijuana in all non-residential zones, pending the completion of studies and the preparation of an update to the City's Zoning Code. On June 24, 2015, the City Council adopted Interim Urgency Ordinance No. 694, extending the moratorium for an additional 10 months and 15 days.

In 2013, the California Supreme Court found that the CUA and MMP *do not* preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries. (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729 [affirmed authority of cities to prohibit the operation of medical marijuana dispensaries within their jurisdiction through land use laws]; see also, *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978 [state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within that city"].)

#### New Marijuana Regulations – the Medical Marijuana Regulation and Safety Act

In September of 2015, the State legislature enacted, and the Governor signed into law, three (3) bills – AB 243, AB 266 and SB 643<sup>1</sup> – which together form the Medical Marijuana Regulation and Safety Act (the "Act"). The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. The statewide regulatory scheme is headed by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The Department of Food and Agriculture will be responsible for regulating cultivation; the Department of Public Health for developing standards for manufacture, testing, and production and labeling of edibles; the Department of Pesticide Regulation for developing pesticide standards; and the Departments of Fish and Wildlife and State Water Board for protecting water quality.

### **ANALYSIS**

#### Dual Licensing System

Although the Bureau of Medical Marijuana Regulation will issue the State licenses, the MMRSA provides for a system of dual licensing with the city or counties in which the business is located. Within approximately two years, all cultivation and distribution of medical marijuana will require one of seventeen different *state* licenses. The licenses will be valid for one year and must be renewed annually<sup>2</sup>.

However, the new laws maintain the authority of local agencies to prohibit, regulate and/or license medicinal marijuana uses within their jurisdiction. The MMRSA expressly provides that it is not intended "to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements." (New Bus. & Prof. Code §

<sup>1</sup> Generally, AB 266 addresses dispensaries and overall licensing, AB 243 addresses cultivation and the environment (cultivation pollution and water issues), and SB 643 addresses physicians and taxes.

<sup>2</sup> A State license will not be required for individual medical use and cultivation, or the provision of medical marijuana by a "caregiver" to no more than five "patients."

19315.) That is accomplished, in part, by the requirement that before one of the new medical marijuana state licenses will be issued, an applicant must have obtained a *local* license/permit for medical marijuana cultivation or distribution.

***Pursuant to the following new statutes, local jurisdictions effectively will have a “veto” over whether a state license can be issued:***

(1) Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license *until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.*”

(2) Health & Safety Code § 11362.777(b): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, *from the city. . . in which the cultivation will occur.*”

(3) Business & Professions Code § 19316: “[Local jurisdictions] may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity.”

(4) Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization *shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .*”

(5) Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

The new regulatory regime is akin to the need to secure an alcohol license before serving alcohol - yet with local control over issuance of medical marijuana licenses. For example, the City of Fresno expressly prohibits all cultivation. Because of those local prohibitions, people in Fresno will be ineligible for the necessary state cultivation licenses. Similarly, if the municipal code text amendments described herein are adopted, the same will be true in the City of Irwindale.

#### Time-Sensitive Cultivation Regulation

Some of the new laws created by the MMRSA will take effect on January 1, 2016. After that, the State will need several months (probably at least a year) to set up the necessary agencies, information systems, and regulations to actually begin issuing licenses. It is expected that state licenses (if not preempted by local government regulations) will start being issued on January 1, 2018. In the interim, local governments may choose to adopt new ordinances to permit or license local businesses in preparation for State licensing – most of which are not time sensitive.

The issue of cultivation regulations, however, is time sensitive. The MMRSA, as currently written provides that ***if a city does not have cultivation regulations or a prohibition in place by March 1, 2016, then when the State begins issuing cultivation licenses (likely in 2018) an individual in that city can skip the need to first secure a local license/permit and apply directly for a state cultivation license.***

Specifically, new Health & Safety Code § 11362.777(c)(4) provides in part that:

“If a city. . . does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city . . . .”

#### Summary of City Ordinance & Recommended Amendments

The City of Irwindale currently has an express prohibition on the establishment of medicinal marijuana dispensaries, both fixed and mobile, in all zones throughout the City. This prohibition is codified in the City’s Zoning Code at section 17.32.015 (the “Ordinance”). As the City has this existing regulation, it will not be affected by many of the changes created by the Act.

The primary issues of concern for the City relate to the following two areas of the law, which are addressed in the proposed amendments to the Ordinance, along with other miscellaneous “tweaks” and clarifications:

#### **(1) Marijuana Cultivation.**

The City currently has a local cultivation ban. The Interim Urgency Ordinance, which was adopted on May 13, 2015, and was extended for a period of 10 months and 15 days per Interim Urgency Ordinance No. 694. The Act contains new regulations for the cultivation of medical marijuana, which will go into effect on March 1, 2016 unless the City exercises its authority under the Act to expressly prohibit cultivation if they do so prior to that date.

Our office is advised that the City seeks to also maintain local control over cultivation. Accordingly, the City Attorney’s office has prepared amendments to the Ordinance prohibiting the "cultivation of marijuana and medical marijuana" citywide.

#### **(2) Mobile Delivery of Marijuana.**

Mobile dispensaries are currently prohibited under the Ordinance. (See, IMC § 17.32.015.) However, this prohibition merits clarification to accord with the new state regulatory scheme – which has created separate regulations for marijuana dispensaries and mobile delivery of marijuana.

Accordingly, the City Attorney's office has also prepared amendments to the Ordinance with clarify the separate definitions for these uses and confirm that the mobile delivery of marijuana and/or medical marijuana within the City are also prohibited. It should be noted that transportation of marijuana through the City is still allowed by State regulation and cannot be banned though local ordinance.

The proposed amendments prohibiting the mobile delivery of marijuana and/or medical marijuana dispensaries, and prohibiting cultivation of same within the City limits are consistent with the existing language of Section 17.32.015 prohibiting medical marijuana dispensaries. Further, it is recognized that the use or possession of marijuana is a federal violation under the Controlled Substances Act and is classified as a "Schedule I Drug" which is defined as a drug or other substance that has a high potential for abuse. Furthermore, the Federal Controlled Substance Act makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

Finally, it should be noted that the City is a "permissive zoning" jurisdiction, meaning the City's Zoning Ordinance lists all permitted uses, and a particular use that is not listed as permitted is prohibited. Accordingly, it should be self-evident that because marijuana cultivation and mobile delivery are not listed as permitted uses, they are prohibited. That said, given that the language of the MMRSA provides requires a codified "land use regulation or ordinance" (as to cultivation) and or "express ban" (as to mobile delivery) to be effective, in an abundance of caution, it is recommended that the City adopt express prohibitions as to these two issues. This is further advisable in light of the fact that the City already has existing dispensary regulations – which lend to an argument that it did not intend to prohibit these additional uses unless it included them in its medicinal marijuana regulations, as is accomplished by the proposed amendments.

## **ENVIRONMENTAL REVIEW**

The Planning Commission finds and recommends f this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

## **RECOMMENDATION**

Staff and the City Attorney's office recommend that the Planning Commission take the following action(s):

1. Waive reading of and adopt Resolution No. 669(15) recommending that the City Council adopt the following Ordinance: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE TO ADD CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND TO

FURTHER PROHIBIT MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES CITYWIDE, AMEND AND ADD DEFINITIONS IN CHAPTER 17.08 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE , AND TO REPEAL SECTION 17.32.015 OF CHAPTER 17.32 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO DELETE DUPLICATIVE PROVISIONS

**ATTACHMENTS**

Exhibit A: Resolution No. 665(15) with Ordinance No. 700

**RESOLUTION NO. 669(15)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF IRWINDALE THE ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE TO ADD CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND TO FURTHER PROHIBIT MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES CITYWIDE, AMEND AND ADD DEFINITIONS IN CHAPTER 17.08 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE, AND TO REPEAL SECTION 17.32.015 OF CHAPTER 17.32 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO DELETE DUPLICATIVE PROVISIONS**

**A. RECITALS.**

- i. In 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” (the “CUA”); and
- ii. The CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health; and
- iii. In 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and
- iv. These new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and
- v. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and
- vi. In 2008, the City Council of the City of Irwindale (“City”) adopted a prohibition on medical marijuana dispensaries by adopting Ordinance No. 624, codified in the City’s Zoning Ordinance at section 17.32.015 of Chapter 17.32 of Title 17 of the Irwindale Municipal Code (the “Ordinance”); and

- vii. In 2013, the California Supreme Court confirmed that cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and
- viii. Also in 2013, the California Supreme Court further determined that the CUA and MMP do “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city” (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978); and
- ix. Under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and
- x. On October 9, 2014, Governor Jerry Brown signed into law, three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and
- xi. On May 13, 2015, the City Council of the City of Irwindale (“City”) adopted a temporary moratorium on the commercial and industrial cultivation, processing and distribution of medical marijuana in all non-residential zones pending the completion of studies and the preparation of an update to the City’s Zoning Code by adopting Interim Urgency Ordinance No. 691; and
- xii. On June 24, 2015, the City Council of the City of Irwindale (“City”) adopted an extension of a temporary moratorium on the commercial and industrial cultivation, processing and distribution of Medical marijuana in all nonresidential zones pending completion of studies and the preparation of an update to the City’s Zoning Code, established by Interim Urgency Ordinance No. 691 pursuant to section 65858(d) of the California Government Code; and
- xiii. The Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and
- xiv. In addition to creating these State controls, the Act preserves the City’s authority to prohibit, regulate and/or license medicinal marijuana uses within its jurisdiction, as it expressly provides that the Act:
  - 1. Is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local

- permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
2. Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c));
  3. Authorizes local jurisdictions like the City with the power to “adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity” (Bus. & Prof. Code § 19316); and
- xv. The Act further expressly allows local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
- xvi. The Act requires a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5 (m), from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a));
- xvii. Under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and
- xviii. Pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medicinal marijuana dispensaries, cultivation and/or mobile delivery will effectively have a “veto” over whether a state license for the locally regulated activities can be issued:
1. Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.”

2. Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur.”
  3. Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .”
  4. Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”
- xix. The City hereby re-affirms and confirms that the City’s Zoning Code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and
  - xx. California Health & Safety Code Section 11362.777(b)(3) expressly provides that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and
  - xxi. Several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including but not limited to offensive odors, criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana, and public health concerns including fire hazards and problems associated with mold, fungus, and pests; and
  - xxii. Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and
  - xxiii. Due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety and/or “attractive nuisance”; and
  - xxiv. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and excessive use of electricity

increases the risk of fire, which presents a clear and present danger to the building and its occupants; and

- xxv. The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and
- xxvi. Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and
- xxvii. Based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and
- xxviii. The issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and
- xxix. Pursuant to the above-described express statutory authority and its police power, the City has determined that, in addition to the existing prohibition on the establishment of medicinal marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation and delivery of marijuana is needed to protect the public health, safety and welfare; and
- xxx. In light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend Title 17 of the Irwindale Municipal Code to further prohibit cultivation and mobile dispensaries pursuant to the new state law requirements (AB 266 and AB 243), and to make other miscellaneous edits to effectuate the same (the "Amendments"); and
- xxxi. The Amendments would affect all properties city-wide; and

- xxxii. On December 16, 2015, the Planning Commission conducted a duly noticed public hearing on the proposed Amendments and recommended that the City Council adopt the same; and
- xxxiii. The City of Irwindale is authorized by Article XI, Section 5 and Section 7 of the California Constitution to exercise the police power of the State by adopting regulations, such as the Amendments, to promote public health, public safety, and general prosperity.
- xxxiv. All legal prerequisites to the adoption of this ordinance have occurred.

## **B. RESOLUTION.**

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

1. The Planning Commission finds and determines that the recitals above are true and correct.

2. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to the proposed Zoning Code amendment, including written staff reports, verbal testimony, this Planning Commission hereby specifically finds as follows:

A. The cultivation and dispensing of marijuana, both fixed and mobile, has significant impacts or the potential for significant impacts on the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries, cultivation and the mobile delivery of same.

B. The proposed Amendments will further the public health, safety and general welfare. The proposed Amendments to the Ordinance will prohibit marijuana and medical marijuana dispensaries, cultivation and the mobile delivery of same within the City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of same, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.

C. The proposed Amendments will not adversely affect adjoining property as to value, precedent or be detrimental to the area. The proposed Amendments to the Ordinance will further solidify the City's stance on prohibiting medical marijuana dispensaries, cultivation, and the mobile delivery of same. The prohibition of these uses will help protect property values in the City and discourage a wide range of illicit activities associated with the sale, cultivation and dispensing of marijuana and/or medical marijuana.

D. The proposed Amendments are consistent with the General Plan and are in compliance with all applicable provisions of the Zoning Code and other ordinances and regulations of the City. The proposed amendments prohibiting marijuana and medical marijuana dispensaries, cultivation, and the mobile delivery of same within the city limits are consistent with the existing language of Chapter 17.32, within the municipal code.

E. The proposed Amendments are consistent with Federal Law. The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

3. The Planning Commission does hereby recommend that the City Council find and determine that the project is exempt from CEQA pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment.

4. The Planning Commission hereby specifically finds and determines that, having considered the record as a whole, including the findings set forth herein, the changes and alterations, which have been incorporated into and conditioned upon the project proposed in the Application, there is no evidence before this Planning Commission that the project proposed herein will have the potential of adverse effects on wildlife resources or the habitat upon which wildlife depends. Based upon substantial evidence, this Planning Commission hereby rebuts the presumption contained in Section 753.5 (d) of Title 14 of the California Code of Regulations. Notwithstanding any other provision of this Resolution, if the Department of Fish and Game requires payment of a fee pursuant to Section 711.4 of the California Fish and Game Code, payment thereof shall be made by the Applicant prior to the issuance of any building permit or other entitlement with regard to this project.

5. Based upon the substantial evidence and conclusions set forth herein above, this Planning Commission hereby recommends that the City Council adopt "An Ordinance of The City Council of the City of Irwindale to Add Chapter 17.110 to Title 17 of the Irwindale Municipal Code to Prohibit the Establishment of Medical Marijuana

Dispensaries and to Further Prohibit Marijuana Cultivation and Mobile Marijuana Dispensaries Citywide, Amend and Add Definitions in Chapter 17.08 of Title 17 of the Irwindale Municipal Code, and to Repeal Section 17.32.015 of Chapter 17.32 of Title 17 of the Irwindale Municipal Code to Delete Duplicative Provisions” in the form as attached hereto and incorporated by reference herein.

- 6. The Secretary shall:
  - a. Certify to the adoption of this Resolution; and
  - b. Forthwith transmit a copy of this Resolution to the City Council.

ADOPTED AND APPROVED this 16<sup>th</sup> day of December 2015.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

I, Gus Romo, Community Development Director of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Irwindale held on the 16<sup>th</sup> day of December 2015, by the following vote:

AYES:                    COMMISSIONERS:

NOES:                    COMMISSIONERS:

ABSENT:                COMMISSIONERS:

ABSTAIN:               COMMISSIONERS:

\_\_\_\_\_  
Secretary

**ORDINANCE NO. 700****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE TO ADD CHAPTER 17.110 TO TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND TO FURTHER PROHIBIT MARIJUANA CULTIVATION AND MOBILE MARIJUANA DISPENSARIES CITYWIDE, AMEND AND ADD DEFINITIONS IN CHAPTER 17.08 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE, AND TO REPEAL SECTION 17.32.015 OF CHAPTER 17.32 OF TITLE 17 OF THE IRWINDALE MUNICIPAL CODE TO DELETE DUPLICATIVE PROVISIONS****A. RECITALS**

- i. In 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” (the “CUA”); and
- ii. The CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health; and
- iii. In 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and
- iv. These new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and
- v. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and
- vi. In 2008, the City Council of the City of Irwindale (“City”) adopted a prohibition on medical marijuana dispensaries by adopting Ordinance No. 624, codified in the City’s Zoning Ordinance at section 17.32.015 of Chapter 17.32 of Title 17 of the Irwindale Municipal Code (the “Ordinance”); and
- vii. In 2013, the California Supreme Court confirmed that cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and
- viii. Also in 2013, the California Supreme Court further determined that the CUA and MMP do “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city” (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978); and
- ix. Under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

- x. On October 9, 2014, Governor Jerry Brown signed into law, three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and
- xi. On May 13, 2015, the City Council of the City of Irwindale (“City”) adopted a temporary moratorium on the commercial and industrial cultivation, processing and distribution of medical marijuana in all non-residential zones pending the completion of studies and the preparation of an update to the City’s Zoning Code by adopting Interim Urgency Ordinance No. 691; and
- xii. On June 24, 2015, the City Council of the City of Irwindale (“City”) adopted an extension of a temporary moratorium on the commercial and industrial cultivation, processing and distribution of Medical marijuana in all nonresidential zones pending completion of studies and the preparation of an update to the City’s Zoning Code, established by Interim Urgency Ordinance No. 691 pursuant to section 65858(d) of the California Government Code; and
- xiii. The Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and
- xiv. In addition to creating these State controls, the Act preserves the City’s authority to prohibit, regulate and/or license medicinal marijuana uses within its jurisdiction, as it expressly provides that the Act:
  - 1. Is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
  - 2. Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government’s right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c));
  - 3. Authorizes local jurisdictions like the City with the power to “adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity” (Bus. & Prof. Code § 19316); and
- xv. The Act further expressly allows local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362. 777(c)(4));
- xvi. The Act requires a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300. 5 (m), from

operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a));

- xvii. Under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and
- xviii. Pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medicinal marijuana dispensaries, cultivation and/or mobile delivery will effectively have a "veto" over whether a state license for the locally regulated activities can be issued:
  1. Business & Professions § 19320(b): "A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance."
  2. Health & Safety Code § 11362.777(b)(1): "A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur."
  3. Business & Professions Code § 19320(b): "Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . ."
  4. Business & Professions Code § 19312: "Each licensing authority may suspend or revoke licenses. . . ."
- xix. The City hereby re-affirms and confirms that the City's Zoning Code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and
- xx. California Health & Safety Code Section 11362.777(b)(3) expressly provides that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and
- xxi. Several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including but not limited to offensive odors, criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana, and public health concerns including fire hazards and problems associated with mold, fungus, and pests; and

- xxii. Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and
- xxiii. Due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety and/or “attractive nuisance”; and
- xxiv. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the building and its occupants; and
- xxv. The Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and
- xxvi. Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and
- xxvii. Based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and
- xxviii. The issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and
- xxix. Pursuant to the above-described express statutory authority and its police power, the City has determined that, in addition to the existing prohibition on the establishment of medicinal marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation and delivery of marijuana is needed to protect the public health, safety and welfare; and
- xxx. In light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend Title 17 of the Irwindale Municipal Code to further prohibit cultivation and mobile dispensaries pursuant to the new state law requirements (AB 266 and AB 243), and to make other miscellaneous edits to effectuate the same (the “Amendments”); and
- xxxi. The Amendments would affect all properties city-wide; and

- xxxii. On December 16, 2015, the Planning Commission conducted a duly noticed public hearing on the proposed Amendments and recommended that the City Council adopt the same; and
- xxxiii. On December \_\_\_, 2015, the City's City Council conducted a duly noticed public hearing on the proposed Amendments, and all testimony received was made a part of the public record; and
- xxxiv. The City Council has duly considered all information presented to it, including the Planning Commission findings, PC Resolution \_\_\_, written staff reports, and any testimony provided at the public hearing; and
- xxxv. The City of Irwindale is authorized by Article XI, Section 5 and Section 7 of the California Constitution to exercise the police power of the State by adopting regulations, such as the Amendments, to promote public health, public safety, and general prosperity.
- xxxvi. All legal prerequisites to the adoption of this ordinance have occurred.

## **B. ORDINANCE**

NOW, THEREFORE, the City Council of the City of Irwindale does hereby ordain as follows:

**Section 1.** The City Council finds that the above recitals are true and correct and are incorporated herein by this reference. Additionally, the City Council finds as follows:

- A. The cultivation and dispensing of marijuana, both fixed and mobile, has significant impacts or the potential for significant impacts on the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries, cultivation and the mobile delivery of same.
- B. The proposed Amendments will further the public health, safety and general welfare. The proposed Amendments to the Ordinance will prohibit marijuana and medical marijuana dispensaries, cultivation and the mobile delivery of same within the City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of same, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.
- C. The proposed Amendments will not adversely affect adjoining property as to value, precedent or be detrimental to the area. The proposed Amendments to the Ordinance will further solidify the City's stance on prohibiting medical marijuana dispensaries, cultivation, and the mobile delivery of same. The prohibition of these uses will help protect property values in the City and discourage a wide range of

illicit activities associated with the sale, cultivation and dispensing of marijuana and/or medical marijuana.

- D. The proposed Amendments are consistent with the General Plan and are in compliance with all applicable provisions of the Zoning Code and other ordinances and regulations of the City. The proposed amendments prohibiting marijuana and medical marijuana dispensaries, cultivation, and the mobile delivery of same within the city limits are consistent with the existing language of 17.32.015, of the municipal code.
- E. The proposed Amendments are consistent with Federal Law. The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

**Section 2.** The definition of “medical marijuana dispensary” in section 17.08.376 of Chapter 17.08 of Title 17 is hereby deleted in its entirety.

**Section 3.** The following definitions are hereby added to Chapter 17.08 of Title 17 and shall now read as follows:

**17.08.154 - Delivery.**

“Delivery” shall have the same meaning as set forth in Business and Professions Code section 13900.5(m).

**17.08.366 - Marijuana.**

“Marijuana”, also known as cannabis, means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any hybrids, derivatives or strains. thereof, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996) or the California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

**17.08.367 – Marijuana Cultivation.**

“Marijuana Cultivation” means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.

**17.08.368 – Marijuana Processing.**

“Marijuana Processing” means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, trimming, packaging, testing, and extraction of active ingredients to create marijuana related products and concentrates.

#### **17.08.373 - Medical Cannabis.**

“Medical cannabis”, also known as “medical cannabis product,” or “cannabis product”, means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Health and Safety Code section 11362.5).

#### **17.08.376 – Marijuana Dispensary.**

“Marijuana Dispensary”, also known as “Medical Marijuana Dispensary,” means any association, business, office, facility, use, establishment or location, retail storefront, provider or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business and Professions Code section 19300.5(m) or any successor statute) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the Office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

A “Marijuana Dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or application law: a clinic licensed pursuant to chapter 1 of division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to chapter 2 of division 2 of the Health and Safety Code, a facility licensed pursuant to chapter 2 of division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to chapter 3.01 of division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to chapter 3.2 of division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to chapter 8 of division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 *et seq.* provided, however, that cultivation for any purpose shall not be permitted.

#### **17.08.377 - Mobile Marijuana Dispensary.**

“Mobile Marijuana Dispensary” means any business, office, store, facility, location, retail “storefront” or wholesale component of any establishment, cooperative, collective, club or entity of that nature that transports or delivers (as defined in Business & Professions Code § 193500(m) or any successor statute thereto), or arranges the transportation or delivery of marijuana and/or medical marijuana for any purpose.

#### **17.08.401 – Operation.**

“Operation” means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary, fixed or mobile.

**17.08.403 – Person.**

“Person” means any person, firm, corporation, association, club, society, or other organization. The term “person” shall include any owner, manager, proprietor, employee, volunteer or salesperson.

**Section 4.** Chapter 17.110 of Title 17 of the Irwindale Municipal Code is hereby added and shall read as follows:

**Chapter 17.110  
MEDICAL MARIJUANA**

17.110.010	Purpose.
17.110.020	Findings.
17.110.030	Prohibition.
17.110.040	Use or activity prohibited by state or federal law.
17.110.050	Enforcement.

**Section 17.110.010 Purpose.**

The purpose of this Chapter is to prohibit the establishment of marijuana and medical marijuana dispensaries, cultivation of marijuana, and mobile delivery or distribution of marijuana, as defined herein, in any zone located within the City of Irwindale.

**Section 17.110.020 Findings.**

In adopting the prohibitions codified in this Chapter, the City Council makes the following findings and determinations:

A. The prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council by its police power and state law.

B. On October 9, 2015, the governor signed the “Medical Marijuana Regulation and Safety Act” (the “Act”) into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code § 19315(a));

3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c)); and

4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a)).

C. It is recognized that the Federal Controlled Substances Act, codified at 21 U.S.C. Section 801 et seq., classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse. The Controlled Substances act makes it unlawful for any person to cultivate or dispense marijuana without regard to a claimed medical need.

D. The City Council finds that this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

**Section 17.110.030 Prohibition.**

A. The establishment and/or operation of a medical marijuana dispensary is prohibited in all zones throughout the City.

B. Marijuana cultivation, marijuana processing, and delivery of marijuana or medical cannabis products are prohibited activities in the city, except where the City is preempted by federal or state law from enacting a prohibition on any such activity.

C. Mobile Marijuana Dispensaries. The establishment or operation of a mobile marijuana dispensary shall be prohibited in all zones throughout the City.

1. No person shall locate, operate, own, suffer, allow to be operated or aid, abet, or assist in the operation of any mobile marijuana dispensary within the City.

2. No person shall deliver and/or dispense marijuana and/or medical marijuana to any location within the City from a mobile marijuana dispensary or any other vehicle or method, regardless of where the mobile marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

3. No person shall deliver and/or dispense any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the City from a mobile marijuana dispensary, or any other vehicle or method, regardless of where the mobile marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

D. Marijuana-Related Licenses and Permits. No permit or any other applicable license or entitlement for use, whether administrative or discretionary, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a marijuana dispensary within the city limits, the establishment or operation of a mobile marijuana dispensary within the city limits, marijuana cultivation, marijuana processing or marijuana delivery, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by federal or state law.

**Section 17.110.040 Use or activity prohibited by state or federal law.**

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity, which is otherwise prohibited by any state or federal law.

**Section 17.110.050 Enforcement.**

The violation of any provision in this Chapter shall be and is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy and, at the discretion of the city, create a cause of action for injunctive relief. Violations of this Chapter may further be enforced pursuant to the provisions of Title 1 of the City’s Municipal Code or any other applicable law.

**Section 5.** Section 17.32.015 of Chapter 17.32 of Title 17 of the Irwindale Municipal Code is hereby repealed in its entirety.

**Section 6.** The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

**Section 7.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 8.** The City Clerk shall certify to the passage and adoption of this ordinance by the City Council of the City of Irwindale and shall cause a summary of this ordinance to be published in accordance with Government Code Section 36933, in a newspaper of general circulation which is hereby designated for that purpose, and this ordinance shall take effect thirty (30) days after its passage.

**PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Irwindale this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

\_\_\_\_\_  
Mark A. Breceda, Mayor

ATTEST:

\_\_\_\_\_  
Laura M. Nieto, CMC

Deputy City Clerk