

tax structure, modify the permitting process, and allow Level 2 manufacturing with volatile solvents. However, it was determined there were time-sensitive changes to consider now before the initial retail establishments opened for business. Staff has therefore brought forward an ordinance now to make these time-sensitive changes before the broader policy discussion in April.

DISCUSSION

The proposed ordinance (Attachment 1) primarily considers two changes in the City's adopted ordinances. This ordinance allows for authorized individuals 18 years of age or older to purchase medical cannabis products and it requires, consistent with State law, the issuance of both a State and local license before a cannabis business can operate.

In accordance with California Business and Professions Code Section 26140, the sale of medical cannabis products by any M-licensee is allowed to any person 18 years of age or older who possesses a valid government-issued identification card and either a valid physician's recommendation or a valid county-issued identification card under Section 11362.712 of the California Health and Safety Code.

The original commercial medical cannabis ordinances adopted by the Council precluded any members of the public from either being on the premises of a cannabis business or purchasing any cannabis products unless the individual was 21 years of age or older. This is consistent with the regulations under State law for A-Type licensees, (Adult-Use cannabis products) and with local regulations related to the purchase and consumption of tobacco and alcohol products. Originally, the age requirement to be 21 years of age or older for the purchase of cannabis products, whether medical or otherwise, was proposed and included in the prior ordinances to maintain consistency with other similar types of products. The proposed ordinance, if approved by Council, will allow for qualified individuals 18 years of age or older to purchase medical cannabis products from a M-licensed retailer.

The second change in the ordinance to Grover Beach Municipal Code Subsection (A) of Section 4000.40 now requires that any cannabis operations must have both a local and State license. This is consistent with California Business and Professions Code Section 26038 which authorizes civil penalties up to three times the amount of the license fee for each violation and allows the court to order destruction of the cannabis found on the premises when a business is found to be operating a cannabis operation without a State license. This code section also authorizes criminal penalties and prosecution for operating a cannabis business without a State license. The original ordinance adopted by Council authorized an applicant to operate a commercial cannabis business for up to one year after issuance of a local license. Although this was consistent with a prior version of State legislation on cannabis licensing, that has subsequently been changed by recent legislation and the attached ordinance makes our local ordinance consistent with State law. Business and Professions Code Section 26054.2 gives the State licensing authorities the ability to give preference to commercial licensees if they can show that prior to September 1, 2016 they were operating consistent with the Compassionate Use Act of 1996. Although there is an argument that cannabis uses consistent with the Compassionate Use Act are allowed prior to issuance of State licenses for commercial uses, this section does not allow commercial sales and uses of cannabis products without both local and State licenses being issued under the Medicinal and Adult-Use Regulation and Safety Act.

The remaining changes in the attached ordinance are nonsubstantive cleanup changes to correct code references and renumbering some of the subsections.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Conduct the first reading of the attached Ordinance to Amend Chapter 18, Article III of the Grover Beach Municipal Code, or
2. Provide alternative direction to staff.

FISCAL IMPACT

There is no identifiable fiscal impact to the City related to this text amendment.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Draft Ordinance

ORDINANCE NO. 18-**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH AMENDING SUBSECTIONS (Y) (FF) (GG) (HH) (II) AND (JJ) OF SECTION 4000.20; SUBSECTION (A) OF SECTION 4000.40; SUBSECTION (G) OF SECTION 4000.200; SUBSECTION (C) OF SECTION 4000.220; SUBSECTIONS (A) AND (B) OF SECTION 4000.230 AND SECTION 4000.240 OF CHAPTER 18, ARTICLE III OF THE GROVER BEACH MUNICIPAL CODE TO REVISE DEFINITIONS AND MAKE REVISIONS CONSISTENT WITH RECENT STATE LAW CHANGES**

WHEREAS, the City of Grover Beach is a General Law city organized pursuant to Article XI of the California Constitution; and

WHEREAS, pursuant to the authority granted the City by Article XI, Section 7 of the California Constitution, the City has the police power to adopt regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or public safety; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land, businesses and property lie within the City's police power; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq. classifies marijuana as a Schedule 1 Drug and makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense, marijuana; and

WHEREAS, the Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation or possession of cannabis for medicinal purposes or otherwise; and

WHEREAS, notwithstanding federal law, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996"), the intent of Proposition 215 being to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act" to clarify the scope of the Compassionate Use Act of 1996 ("CUA"); and

WHEREAS, the Medical Marijuana Program Act ("MMPA") promulgates rules wherein counties and cities can adopt and enforce rules and regulations consistent with its provisions; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768) affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider; and

WHEREAS, in 2015, California enacted three bills – Assembly Bill 243; Assembly Bill 266; and Senate bill 643 – that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sales, transportation,

storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

WHEREAS, In November, 2016, Proposition 64 was enacted and entitled “The Adult Use of Marijuana Act” (“AUMA”) (codified as amendments to California Health and Safety Code, Business and Professions Code, Revenue and Taxation Code and Food and Agricultural Code). The intent of Proposition 64 being to establish a comprehensive system to decriminalize, control and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana, as well as other marijuana related activities; and

WHEREAS, June 27, 2017, the State Legislature adopted the State Budget along with a number of trailer bills including Senate Bill no. 94 which enacted “The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA. Under this bill, these consolidated provisions make up the MAUCRSA and includes the regulations for both medical and nonmedical cannabis uses; and

WHEREAS, Sections 26054 and 26200 of the California Business and Professions Code establishes regulations for setback requirements for Commercial Cannabis Activity consistent with local regulations and again affirming that counties and cities can under state law adopt ordinances that control, restrict or ban the location and establishment of any Commercial Cannabis Activity licensed under MAUCRSA; and

WHEREAS, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 753 (“*Inland Empire*”) that the objectives of the CUA and MMPA were modest and that those acts did not create a broad right to access medical marijuana, and *Inland Empire* goes on to provide that neither the CUA nor the MMPA “expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude” the distribution of medical marijuana. (Id. At p. 762.); and

WHEREAS, the Court of Appeal, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal.App.4th 975, that the reasoning of *Inland Empire* applies to the cultivation of medical marijuana as well as its distribution, as both are addressed in the CUA and the MMPA; and

WHEREAS, with limited exceptions, neither the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical Cannabis Regulation and Safety Act (MCRSA), the Adult Use of Marijuana Act (AUMA) or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities for distribution, cultivation, manufacturing or processing medical or non-medical marijuana within its jurisdiction, and

WHEREAS, notwithstanding the comprehensive nature of both the Adult Use of Marijuana Act and the Medicinal and Adult-Use Cannabis Regulation and Safety Act, both Acts under state law protect the ability of local entities to maintain reasonable control over medical and non-medical marijuana activities; and

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of medical marijuana-related businesses and personal use which are intended to operate in conjunction with the City of Grover Beach Development Code’s land use regulation and which are intended to address the negative impacts and nuisance impacts of marijuana-related businesses and use; and

WHEREAS, mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council’s intention that nothing in this ordinance shall be construed, in anyway, to expand the rights of anyone to use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, testing or consumption of marijuana that is otherwise illegal. It is further the intent of the City Council of the City of Grover Beach to maintain local control over these matters to the fullest extent permitted by law; and

WHEREAS, this text amendment to the existing ordinance 17-06 fails to create any environmental impacts not already reviewed in the Negative Declaration prepared for ordinance 17-06 and is in conformance with the California Environmental Quality Act whereas Council has concluded this text amendment would not have a significant impact on the environment.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF GROVER BEACH AS FOLLOWS:

PART 1. Subsection (Y) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

(Y) “Microbusiness” (State license Type 12) shall mean a use for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer under state law, or any combination of at least three (3) uses listed herein provided such licensee can demonstrate compliance with all requirements imposed by the Medicinal and Adult-Use Cannabis Regulation and Safety Act on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities.

PART 2. Subsection (FF) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

~~(HHFF)~~ “State License” or “license” means a state license issued pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act.~~

PART 3. Subsection (GG) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

~~(IIGG)~~ “Testing Laboratory” means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Holds a valid Certificate of Accreditation by an Accrediting Body that is independent from all other Persons involved in the medical cannabis industry in the state.
- (2) Registered with the State Department of Public Health.

PART 4. Subsection (HH) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

~~(JJHH)~~ “Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

PART 5. Subsection (II) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

~~(KKH)~~ “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purpose of conducting Commercial Cannabis Activity authorized by the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

PART 6. Subsection (JJ) of Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Definitions, is hereby amended as follows:

~~(LLJJ)~~ “Transporter” means a Person issued a state license by the State of California, or one of its departments or divisions, to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the State of California, or one of its departments or divisions, that have been issued a State license pursuant to the Medicinal and Adult-Use Regulation and Safety Act.

PART 7. Subsection (A) of Section 4000.40 of Chapter 18, Article III of the Grover Beach Municipal Code, Licenses and Permits, is hereby amended as follows:

(A) In addition to the requirements which may be imposed pursuant to this Chapter, no Person shall engage in Commercial Cannabis Activity or open or operate a Commercial Cannabis Business without possessing both a Commercial Cannabis Permit issued by the City Council and ~~within one (1) year of the ability to obtain a license from the State of California upon implementation of the Medical Cannabis Regulation and Safety Act,~~ a license issued by the State of California or one of its departments or divisions. Commercial Cannabis Activity shall be permitted in the City of Grover Beach only as expressly provided in this Chapter and Article IX and if not expressly permitted by this Chapter and Article IX shall be prohibited.

- (1) An application for a Commercial Cannabis Business permit shall be consistent with this chapter, section and regulations adopted by Council. Each Commercial Cannabis Business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance.
- (2) In the event of an application for renewal of a Commercial Cannabis Permit, it shall be filed at least sixty (60) calendar days prior to the expiration date of the permit with the City Manager or his/her designee. The permit’s term will be extended until such time the City takes action.
- (3) An application for renewal of a Commercial Cannabis Permit shall be rejected if any of the following exists:
 - (a) The application is filed less than sixty (60) days before its expiration.
 - (b) The Commercial Cannabis Permit is suspended or revoked at the time of the application.
 - (c) The City Council or City Manager finds Good Cause to reject the permit as defined with the application process resolution approved by Council.

- (d) Any other Commercial Cannabis Permit held by the applicant is suspended or revoked at the time of the application for the subject Permit being considered by the City.
 - (e) The Commercial Cannabis Business has not been in regular and continuous operation in the four (4) months prior to the renewal application.
 - (f) The Commercial Cannabis Business fails to conform to the requirements of this Chapter, any regulations adopted pursuant to this Chapter or the conditions imposed as part of any Use Permit or zoning requirements.
 - (g) The permittee fails to renew its State of California license.
- (4) If a renewal application is rejected for reasons other than Good Cause, a Person may file a new application pursuant to this Chapter.
- (5) Applicants seeking multiple licenses for different types of cannabis activity shall be required to comply with multiple licensing restrictions contained within ~~Business and Professions Code §19328~~ State law.

PART 8. Subsection (G) of Section 4000.200 of Chapter 18, Article III, of the Grover Beach Municipal Code, Operating Requirements for All Commercial Cannabis Uses, is hereby amended as follows:

(G) Minors. Persons under the age of ~~twenty-one (21)~~ eighteen (18) years shall not be allowed on the premises of a Commercial Cannabis Business and shall not be allowed to purchase any Cannabis or Cannabis Concentrate products.

It shall be unlawful and a violation of this Chapter for any Person to employ any other Person at a Commercial Cannabis Business who is not at least twenty-one (21) years of age.

The entrance to the Commercial Cannabis Business shall be clearly and legibly posted with a notice that no Person under the age of ~~twenty-one (21)~~ eighteen (18) years of age is permitted to enter upon the premises of the Commercial Cannabis Business.

PART 9. Subsection (C) of Section 4000.220 of Chapter 18, Article III, of the Grover Beach Municipal Code, Operating Requirements for Cultivation and Nurseries, is hereby amended as follows:

(C) If a parcel or lot includes cultivation or nursery activities ~~as defined in Business and Professions Code §19332~~, the parcel or lot may have only one cultivation license or nursery license located on the parcel or lot and the cultivation and nursery activity must be permitted pursuant to this Chapter and State law.

PART 10. Subsections (A) and (B) of Section 4000.230 of Chapter 18, Article III, of the Grover Beach Municipal Code, Operating Requirements for Cannabis Manufacturing; Edibles and Other Cannabis Products; Sale or Distribution of Edible and Other Cannabis Products, is hereby amended as follows:

(A) No edible cannabis products shall be sold or distributed on a retail basis at a Commercial Cannabis Business operating unless operating under a permit issued pursuant to this Chapter and consistent with a license issued by the State of California ~~in accordance with Business and Professions Code sections 19334 et seq.~~

(B) All items to be sold or distributed retail shall be individually wrapped at the original point of preparation. Labeling must include any labeling requirements as required under State

licensing and including but not limited to ~~Business and Professions Code section 19347~~ or any other pertinent State licensing requirements for medical cannabis products.

PART 11. Section 4000.240 of Chapter 18, Article III, of the Grover Beach Municipal Code, Operating Requirements for Cannabis Manufacturing (Level One and Two): Extraction, etc., is hereby amended as follows:

Cannabis manufacturing facilities requiring a Type-6 state license (using non-volatile solvents) or Type-07 state license (using volatile solvents) ~~as defined in Business and Professions Code §19341~~, shall be subject to the operational requirements determined and approved by Council. Council shall establish operational requirements by resolution. Type 7 state licenses, Level Two Manufacturing, shall be limited to using only ethanol as an allowed volatile solvent.

PART 12. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be in violation of the law, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared in violation of the law.

PART 13. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances in conflict with those sections amended or added herein are hereby repealed.

PART 14. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

INTRODUCED at a regular meeting of the City Council held March 5, 2018 and **PASSED, APPROVED, and ADOPTED** by the City Council on __, 2018 on the following roll call vote, to wit:

- AYES: Council Members -
- NOES: Council Members -
- ABSENT: Council Members -
- ABSTAIN: Council Members -

**** D R A F T ****

JOHN P. SHOALS, MAYOR

Attest:

DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

DAVID P. HALE, CITY ATTORNEY