



PLANNING COMMISSION STAFF REPORT

TO: Honorable Chair & Planning Commission **DATE:** June 26, 2019

FROM: Bruce Buckingham, Community Development Director

PREPARED BY: Bruce Buckingham, Community Development Director
David Hale, City Attorney

SUBJECT: Development Application 19-19 – Amend Municipal Code Article IX Section 4.10.045 and the Local Coastal Program to Revise Commercial Cannabis Development Standards

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council approve an amendment to Municipal Code Article IX and the Local Coastal Program to revise commercial cannabis development standards.

BACKGROUND

In 2017, the City Council adopted a land use and regulatory ordinance to allow commercial cannabis uses in the City which have since been amended several times to address industry trends and changes to State law. On May 20, 2019, the Council directed staff to make two revisions to the commercial cannabis land use ordinance for the Commission to consider as follows:

- Revise Section 4.10.045.G.1 to increase the hours of operations for retailers and microbusiness with retailer uses to be open to the public from 7:00 a.m. to 9:00 p.m. subject to certain findings, which would revise the current operating hours of 9:00 a.m. to 7:00 p.m.
- Revise Sections 4.10.045.G.5 to provide a definition of a secured delivery area.

Staff has drafted the proposed amendments for the extended hours of operations subject to the finding that the applicant install cameras on the property frontage to enhance security, and provided definitions for internal and external delivery areas (reference Attachment 1). Staff has also included language to clarify the hours for commercial transport between licensees and deliveries to customers which coincide with the hours of operations.

In addition, the Council directed staff to amend the regulatory ordinance to revise the following:

- Standardize the Commercial Cannabis Permit process to allow the City Manager to approve all permits rather than requiring the Council approve volatile manufacturing only and the City Manager approve the other types of commercial cannabis uses.
- Revise the sale of cannabis accessories to be consistent with State law.

However, the regulatory ordinance is not under the purview of the Planning Commission since it is not land use related. Therefore, the Planning Commission will review and consider a recommendation to the Council only on the land use ordinance amendment. The proposed

amendments to the land use and regulatory ordinances are tentatively scheduled for the July 1, 2019 Council meeting.

Local Coastal Program Amendment

The ordinance would amend Chapter 4 of the Development Code (Article IX of the Municipal Code). Development Code Section 1.20.060 identifies all chapters and sections that constitute the ordinances for the implementation of the City's Local Coastal Program (LCP) in compliance with the California Coastal Act. Therefore, any amendment to Chapter 4 of the Development Code requires a LCP Amendment. A LCP Amendment requires the Coastal Commission's approval prior to the ordinance taking effect.

Staff has reviewed the proposed LCP Amendment with the policies in Chapter 3 of the Coastal Act and has determined that the ordinance would have no effect on public access, recreation, environmentally sensitive habitat areas, or other coastal resources. The Coastal Industrial and Coastal Industrial Commercial Zones are isolated from the beach and direct access is impaired by the railroad tracks. The proposed ordinance makes minor revisions to the commercial cannabis development standards and would not change the kind, location, intensity, or density of the uses. The ordinance is consistent with the existing policies of the LCP that allows commercial cannabis uses in the Coastal Industrial (CIC) and Coastal Industrial Commercial (CIC) Zones and is internally consistent with the current Development Code.

Staff has contacted Coastal Commission staff regarding the proposed LCP Amendment and they have not expressed any concerns regarding the proposed amendment. Upon final adoption of the ordinance by the Council, staff would forward the LCP Amendment to the Coastal Commission for review.

Environmental Review

The proposed amendment is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 based on the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed amendment would not expand the types of uses allowed, or result in an increase in potential development.

ALTERNATIVES

The Planning Commission has the following alternatives to consider:

1. Recommend the City Council approve an amendment to Article IX of the Municipal Code and the Local Coastal Program to revise the development standards; or
2. Provide alternative direction to staff.

PUBLIC NOTIFICATION

On June 13, 2019, a one-eighth page public hearing notice was published in The New Times. The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Draft Land Use Ordinance Amendment
2. Draft LCP Amendment Resolution

ORDINANCE NO. 19-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH
AMENDING ARTICLE IX SECTION 4.10.045 SUBSECTION G TO REVISE
COMMERCIAL CANNABIS DEVELOPMENT STANDARDS**

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 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; 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 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, 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 commercial medical and adult use 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, commercial Medical and Adult Use marijuana-related businesses and personal use will be subject to the zoning and land use regulations as set forth in Article IX, Development Code, of the City of Grover Beach Municipal Code; 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, the Planning Commission held a public hearing on June 26, 2019 and recommended the City Council approve the Development Code amendment; and

WHEREAS, the City Council held a public hearing on July 1, 2019 and conducted an introduction and first reading to approve the amendments to the commercial cannabis land use and regulatory ordinances.

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

PART 1. Findings of Exemption for the purposes of the California Environmental Quality Act:

A. The proposed amendment is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 based on the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed amendment would not expand the types of uses allowed, or result in an increase in potential development.

PART 2. Article IX Development Code, Chapter 4 Standards for Specific Development and Land Use, Section 4.10.045 Commercial Cannabis Activity and Use, Subsection G Development Standards is hereby amended as follows:

G. **Development standards.** Commercial Cannabis Uses shall comply with the following standards:

1. All Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only, may be open to the public between the hours of 9:00 a.m. and 7:00 p.m. ~~and make and receive deliveries between the hours of 9:00 a.m. and 9:00 p.m.~~ Extended hours will be approved from 7:00 a.m. to 9:00 p.m. subject to a finding that enhanced security is agreed to and provided by participating in the City's operated security system with cameras and video capability to view the street frontages of the business to the boundaries of the premises or lot where the business is permitted. All other non-retailer and Microbusinesses with non-retailer uses may operate at any time. ~~but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.~~ Commercial transport between licensees and deliveries to customers for all commercial cannabis businesses shall be between the hours of 7:00 a.m. and 9:00 p.m.

2. Cultivation and nursery uses shall prepare a Water Recycling Management Plan that demonstrates that irrigation water is recycled to the maximum extent feasible using best management practices. A separate water meter shall be installed for irrigation uses.
3. All cultivation and nursery uses shall be within an enclosed building. Cultivation and nursery uses are prohibited outdoors.
4. Cultivation and nursery uses may use mixed-light buildings when issued a local license consistent with State licensing that allows for mixed-light buildings when no light is visible through the roof and windows of grow areas from dusk to dawn.
5. ~~All delivery areas and loading/unloading areas shall be conducted within a secured area.~~ Secured Delivery. All commercial cannabis facilities shall provide a secured shipping and receiving area for deliveries of all cannabis, cannabis concentrate, and cannabis products as defined in GBMC Article III, Chapter 18, Section 4000.20. A secured shipping and receiving area shall comply with either of the following:
 - a. Internal – Within a fully enclosed structure either attached or within the commercial cannabis building that provides sufficient area to park and unload the delivery vehicle(s) located at the side or rear of the building, if feasible. Access shall be through a roll up or similar garage door with removable bollards. The delivery area shall be monitored 24 hours a day by video surveillance, electronic alarm monitoring, and shall not have any windows leading to the outside. Any skylights shall either be removed or have security bars added to prevent entry. The delivery area shall only be accessible to the shipping and receiving area and not directly into the operating, manufacturing, or retail portions of the commercial cannabis business.
 - b. External – Within a fenced or walled area that is not visible from the street and adjacent properties located at the side or rear of the building as approved by the Police Chief. The fence or wall shall be a minimum of six (6) feet in height that is structurally sound and secure to prevent access and fully encloses the delivery area. The fence shall visually screen the delivery area so delivery activities are not visible from the street and adjacent properties. The fence design shall be consistent with the Industrial Design Guidelines and constructed of durable, solid materials. The fence shall include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. If a roof or structure is required to screen the shipping and receiving area from adjacent properties, it shall be made of a solid material that will provide full visual screening of the delivery area. This delivery area shall be monitored 24 hours a day by video surveillance and only be accessible to the shipping and receiving area and not directly into the operating, manufacturing, or retail portions of the commercial cannabis business.
6. Odor control devices and techniques shall be incorporated to ensure that marijuana odors are not detectable from the property boundary and public right-of-way. In multi-tenant buildings marijuana odors shall not be detectable from the building exterior, or from exterior and/or interior common areas such as walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. Odor control systems shall include, but are not limited to, ventilation and exhaust systems that provide sufficient odor absorbing to meet the above requirements.
7. An Operations and Security Plan shall be prepared as required by Municipal Code Article III Chapter 18.

- 8. Design standards in Section 2.40.050 and any other Council adopted design guidelines.
- 9. All applicable regulatory requirements of Municipal Code Article III Chapter 18.

PART 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

PART 4. All ordinances and parts of ordinances in conflict with those sections amended or added herein are hereby repealed.

PART 5. Effective Date. This Ordinance shall not become effective and in full force and effect until 12:01 a.m. on the thirty first day after its final passage for areas not located within the Coastal Zone. This Ordinance shall not become effective and in full force and effect for areas located within the Coastal Zone until final certification by the California Coastal Commission. However, within fifteen (15) days after adoption by the City Council, the Ordinance 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 on July 1, 2019 and **PASSED, APPROVED,** and **ADOPTED** by the City Council on July 15, 2019, on the following roll call vote, to wit:

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

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

JEFF LEE, MAYOR

Attest:

WENDI SIMS, CITY CLERK

Approved as to Form:

DAVID P. HALE, CITY ATTORNEY

RESOLUTION NO. 19-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH
AUTHORIZING AND DIRECTING THE COMMUNITY DEVELOPMENT DIRECTOR
TO SUBMIT THE LOCAL COASTAL IMPLEMENTATION AMENDMENT
ASSOCIATED WITH ORDINANCE NO. 19-__ TO THE
CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION**

WHEREAS, the LCP amendment would amend the City’s commercial cannabis land use ordinance to revise development standards; and

WHEREAS, the Ordinance requires a Local Coastal Program Amendment because it is amending Development Code Section 4.10; and

WHEREAS, the Local Coastal Program Amendment is intended to be carried out in a manner that is fully in conformity with the Coastal Act; and

WHEREAS, the Planning Commission held a public hearing on June 26, 2019 and recommended the City Council approve the land use ordinance amendment and Local Coastal Program Amendment; and

WHEREAS, the City Council at its meeting on July 1, 2019 conducted first reading of the Commercial Cannabis Land Use Ordinance and adopted the Land Use Ordinance at its meeting on July 15, 2019; and

WHEREAS, the proposed amendment is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 based on the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed amendment would not expand the types of uses allowed, or result in an increase in potential development.

WHEREAS, the proposed Local Coastal Program Amendment will take effect automatically upon final certification by the Coastal Commission unless revisions are made by the Coastal Commission.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Grover Beach **DOES HEREBY AUTHORIZE AND DIRECT** the Community Development Director to submit an amendment to Section 4.10.045 of Article IX Development Code associated with Ordinance No. 19-__, to the California Coastal Commission for final certification.

On motion by Council Member _____, seconded by Council Member _____, and on the following roll-call vote, to wit:

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

the foregoing RESOLUTION NO. 19-__ was **PASSED, APPROVED,** and **ADOPTED** at a regular meeting by the City Council on July 15, 2019.

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

JEFF LEE, MAYOR

Attest:

WENDI SIMS, CITY CLERK