

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W14a



Prepared July 28, 2010 (for August 11, 2010 hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, District Manager
Mike Watson, Coastal Planner

Subject: City of Carmel-by-the-Sea LCP Amendment Number 1-10 (Medical Marijuana Dispensaries). Proposed amendment to the City of Carmel-by-the-Sea certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's August 11, 2010 meeting to take place at the San Luis Obispo County Board of Supervisors Chambers at 1055 Monterey Street in San Luis Obispo.

Summary

The City of Carmel is proposing to amend its certified Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning code) to include a prohibition on medical marijuana dispensaries in Carmel village. The proposed amendment will make it unlawful to establish, operate, or maintain a medical marijuana dispensary in anywhere in the City. The City's rationale for the prohibition of medical marijuana dispensaries is based, in part, on concerns that California law is incompatible with and preempted by the Federal Controlled Substances Act. Among other factors, the City has concerns that medical marijuana dispensaries may cause negative secondary effects, such as an increase in criminal activity, which would adversely impact the neighborhoods in which they are located. The City indicates that medical marijuana dispensaries would be inconsistent with maintaining Carmel's community character, which is the primary and fundamental objective of Carmel's LCP overall.

Pursuant to the Coastal Act, the Commission may only reject zoning ordinance or other implementing actions on the grounds that they do not conform with or are inadequate to carry out the provisions of the certified Land Use Plan (LUP) (per Coastal Act Section 30513). Protecting Carmel's community character is the fundamental goal and objective of Carmel's LCP, and the proposed amendment would not render the IP not in conformance with nor inadequate to carry out the LCP's LUP in this respect. As such, the proposed amendment does not raise any issues justifying its rejection pursuant to Coastal Act Section 30513. **Therefore, Staff recommends that the Commission approve the LCP amendment.** The necessary motions and resolutions can be found on page 2 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on June 2, 2010. It is IP only and the original 60-day action deadline was August 1, 2010. On July 7, 2010, the Commission extended the action deadline by one year to August 1, 2011. Thus, the Commission has until August 1, 2011 to take a final action on this LCP amendment.



Staff Report Contents	page
I. Staff Recommendation – Motions and Resolutions.....	2
II. Findings and Declarations	3
A. Proposed LCP Amendment.....	3
B. LUP Consistency Analysis	3
C. California Environmental Quality Act (CEQA).....	5
III. Exhibits	
Exhibit A: City Ordinance with Proposed LCP Changes (in cross-through and underline notation)	

I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment as submitted. The Commission needs to make one motion in order to act on this recommendation.

Approval of Implementation Plan Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in certification of the implementation plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Motion. I move that the Commission **reject** Amendment Number 1-10 to the City of Carmel-by-the-Sea Local Coastal Program Implementation Plan as submitted by the City of Carmel-by-the-Sea. I recommend a no vote.

Resolution to Certify the IP Amendment as Submitted. The Commission hereby certifies Amendment Number 1-10 to the City of Carmel-by-the-Sea Local Coastal Program Implementation Plan as submitted by City of Carmel-by-the-Sea and adopts the findings set forth below on the grounds that the amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Implementation Plan amendment may have on the environment.



II. Findings and Declarations

The Commission finds and declares as follows:

A. Proposed LCP Amendment

The City proposes to amend the Implementation Program/Zoning Ordinance (IP) portion of its certified Local Coastal Program (LCP) to prohibit the establishment of medical marijuana dispensaries within the boundaries of the City of Carmel-by-the-Sea (Carmel). The proposed amendment includes a definition of a medical marijuana dispensary, and will make it unlawful to establish, operate, or maintain a medical marijuana dispensary in any zone district in the City. The amendment does not prohibit the use, possession, or cultivation of marijuana for personal medical purposes. The City's rationale for the prohibition of medical marijuana dispensaries is based, in part, on concerns that California law is incompatible with and preempted by the Federal Controlled Substances Act. Additionally, the City claims that neither the Compassionate Use Act (1996) nor Senate Bill 420, enacted in 2004, and which provides guidance to local governments, requires local governments to allow medical marijuana dispensaries. However, overall, the City is concerned that medical marijuana dispensaries may cause negative secondary effects, such as an increase in criminal activity, which would adversely impact the character of the community and neighborhoods in which they are located. The City Council has concluded that using land for medical marijuana dispensaries would be inconsistent with the City's village character, which emphasizes preservation of coastal resources including its unique architecture, village ambiance, and visitor-serving recreational opportunities.

See Exhibit A for the text of the proposed LCP changes in cross-through and underline format.

B. LUP Consistency Analysis

1. Applicable Policies

The standard of review used by the Commission for the proposed amendment to the Implementation Plan (IP) in reviewing the adequacy of zoning and other implementing measures is whether or not the proposed amendment would render the IP not in conformance with, and inadequate to carry out the provisions of, the Land Use Plan (LUP). Coastal Act Section 30513 states in relevant part:

...The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.

The commission may suggest modifications in the rejected zoning ordinances, zoning district



maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director.

The local government may elect to meet the commission's rejection in a manner other than as suggested by the commission and may then resubmit its revised zoning ordinances, zoning district maps, and other implementing actions to the commission.

The LUP has a number of policies that require development to preserve and maintain the community character of Carmel, and to maintain a balance of land uses compatible with the established pattern of development, including:

LUP Policy G-1: *Continue to preserve and maintain the predominance of the residential character in Carmel through appropriate zoning and land development regulations in all districts.*

LUP Policy G1-2: *Preserve the residential village character and perpetuate a balance of land uses compatible with local resources and the environment.*

LUP Policy O1-3: *Preserve the economic integrity of the community and maintain an economic philosophy towards commercial activity ensuring compatibility with the goals and objectives of the General Plan.*

LUP Policy O1-4: *Maintain a mix of commercial uses that are compatible with the character of Carmel as a residential village.*

LUP Policy O1-5: *Protect and enhance the balanced mix of uses in the central business area, particularly along Ocean Avenue to ensure a high quality, pedestrian oriented commercial environment providing a wide variety of goods and services to local residents.*

2. Analysis

Carmel-by-the-Sea is internationally recognized as a unique coastal community. The character of this community is defined primarily by the predominance of residential zoned neighborhoods surrounding a bustling commercial core district with quaint hotels, visitor-attracting shopping, and dining opportunities. The village overlooks scenic Carmel Bay and its mile-long white sand beach. But perhaps the most character defining feature is the eclectic collection of historic homes, small cottages, meandering streets, and quaint architecture all nestled among a forest of Monterey pine and coast live oak trees. It is the combination of all these attributes that attracts hundreds of thousands of visitors annually.

The proposed amendment will not conflict with the certified LUP, the standard of review in this case. Specifically, the proposed prohibition of medical marijuana dispensaries does not conflict with the



provision of priority land uses identified in the LUP, nor does it raise issue with regard to the public access or coastal resource policies of the LUP. Finally, its addition to the IP does not in any way reduce the IP's adequacy in carrying out the provisions of the LUP, which include the Chapter 3 Policies of the Coastal Act. Protecting community character is the fundamental goal and objective of Carmel's LCP, and the proposed amendment would not render the IP not in conformance with nor inadequate to carry out the LUP in this respect. Therefore, the Commission finds that the proposed amendment, as submitted, does not raise any issues justifying its rejection pursuant to Coastal Act Section 30513.

C. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Local governments may, but are not required to undertake environmental analysis of proposed LCP amendments, and the Commission can and does use any environmental information that the local government has developed.

The City, acting as lead CEQA agency, found the proposed LCP amendment to be exempt under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



RECEIVED

CITY OF CARMEL-BY-THE-SEA

APR 21 2010

CITY COUNCIL

ORDINANCE 2010-2

**CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA AMENDING
THE ZONING ORDINANCE/LOCAL COASTAL IMPLEMENTATION PLAN
TO BAN MEDICAL MARIJUANA DISPENSARIES
IN THE CITY OF CARMEL-BY-THE-SEA**

WHEREAS, the Compassionate Use Act was approved by California voters in 1996 legalizing the use of marijuana for specific medical purposes; and

WHEREAS, the Compassionate Use Act is codified in Health and Safety Code Section 11362.5; and

WHEREAS, the State of California adopted SB 420, which provides guidance to local jurisdictions on the implementation of the Compassionate Use Act; and

WHEREAS, neither the Compassionate Use Act nor SB 420 requires jurisdictions to allow medical marijuana dispensaries in their communities; and

WHEREAS, the Supreme Court determined in 2005 (*Gonzales v. Raich*) that Congress' constitutional authority to regulate the interstate market in drugs extends to doctor-recommended marijuana; and

WHEREAS, based on the Supreme Court's decision, those who dispense or use marijuana, even for medical purposes, are at risk of action by federal agencies; and

WHEREAS, the City will not authorize a commercial use that conflicts with federal law; and

WHEREAS, the City has adopted a General Plan and Municipal Code that strive to protect the village character through clear policies and regulations; and

WHEREAS, the General Plan encourages commercial uses that maintain the economic integrity and character of the City; and

WHEREAS, medical marijuana dispensaries could result in detrimental impacts on City residents, business owners and visitors and are inconsistent with the General Plan; and

WHEREAS, this ordinance is an amendment to sections 17.14.040 and 17.68.040 of the City's Zoning Ordinance/Local Coastal Implementation Plan and requires certification by the California Coastal Commission; and

WHEREAS, the City Council approved the first reading the ordinance on 2 March 2010;
and

WHEREAS, this ordinance will be carried out in a manner consistent with the California Coastal Act.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA does hereby resolve to:

Amend Municipal Code Sections 17.14.040 and 17.68.040 (exhibit "A") banning medical marijuana dispensaries in the City of Carmel-by-the-Sea.

Severability. If any part of this ordinance, even as small as a word or phrase, is found to be unenforceable such finding shall not affect the enforceability of any other part.

Effective Date. This ordinance shall become effective 30 days after final adoption by the City Council or the California Coastal Commission, whichever occurs last.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of April 2010 by the following roll call vote:

AYES: COUNCIL MEMBERS: HAZDOVAC; ROSE; SHARP; TALMAGE & McCLOUD

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

SIGNED,


SUE McCLOUD, MAYOR

ATTEST: .


Heidi Burch, City Clerk

Exhibit "A"

Proposed changes shown in underline

CMC 17.14.040 Additional Use Regulations.

A. All Uses.

1. No new structure or modification to an existing structure shall be permitted nor shall any business license be issued that would allow the creation of publicly accessible retail space occupying fewer than 200 square feet or more than 5,000 square feet unless approved through a use permit and pursuant to the adoption of findings per CMC17.64.200, Retail Space of Less Than 200 Square Feet or Greater Than 5,000 Square Feet.

2. No timeshare projects, programs or occupancies shall be established or permitted in any zone.

3. Except in restaurants, not more than five persons in any one individually licensed business shall be engaged in the production, repair or manufacturing of goods.

4. No use shall be permitted and no process, equipment or materials shall be employed which is found by the Planning Director or by the Planning Commission to be objectionable to persons residing or working in the vicinity by reason of odor, fumes, noise, vibration, illumination, glare, unsightliness, dust, cinders, dirt, refuse, water-carried wastes or heavy truck traffic, or involve any hazard of fire or explosion.

5. Medical Marijuana Dispensaries are prohibited and no person shall operate or permit to be operated a medical marijuana dispensary in or upon any premises in all zones within the City.

CMC 17.68.040 (definitions) Public, Semipublic, and Service Use Classifications.

Medical Marijuana Dispensary. Any facility, clinic, cooperative, club or location, whether fixed or mobile where medical marijuana is made available to, distributed by, or distributed to a qualified patient and/or a primary caregiver as defined in California Health and Safety Code section 11362.5.