

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

December 22, 2010

**TO:** Commissioners and Interested Persons**W8c****FROM:** Sherilyn Sarb, Deputy Director
Teresa Henry, District Manager
Karl Schwing, Supervisor, Regulation & Planning
Meg Vaughn, Coastal Program Analyst**SUBJECT:** Major Amendment Request No. LGB-MAJ-3-09A to the City of Laguna Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the January 12-14, 2011 meeting in Huntington Beach).**SUMMARY OF LCP AMENDMENT REQUEST NO. 3-09A**

Request by the City of Laguna Beach to amend its certified Local Coastal Program (LCP) by making two changes to the certified IP. These two changes would define the term "medical marijuana dispensary" and prohibit that use throughout the City. The LCP amendment was submitted pursuant to City Council Resolution No. 09.077 (requesting Commission action on City Council Ordinance No. 1511). Originally, the amendment included three separate, unrelated segments. The two additional segments were submitted pursuant to City Council Resolution No. 09.086 (requesting action on Ordinance No. 1515) and City Council Resolution No. 09.073 (requesting action on Ordinance No. 1505). Although the amendment request was submitted as a single submittal, the contents of the amendment are three distinct, unrelated changes approved by the City via three separate resolutions and ordinances. The City has withdrawn Segments B (Resolution No. 09.086, Ordinance No. 1515) and C (Resolution No. 09.073, Ordinance No. 1505). Thus, only segment A remains active. The City will resubmit Segments B and C at a future date, allowing more time for Commission and City staff to work together toward an appropriate recommendation. The last day to act on the proposed LCP Amendment is February 1, 2011, so the Commission must act on this amendment request at this hearing (January 2011).

SUMMARY OF STAFF RECOMMENDATION

The proposed prohibition of medical marijuana dispensaries does not raise any issues relative to consistency with the certified land use plan. However, this request for certification has been brought to the Commission because the City determined that this land use prohibition must be contained in the City's Zoning Code, and the Zoning Code is a part of their Local Coastal Program. Any changes to the City's Zoning Code requires an LCP amendment. There is no alternative place in the City's municipal code, that is outside of the LCP, to place this land use prohibition. Since the proposed change to the LCP does not raise any issue of consistency with the certified land use plan (or the Coastal Act), Staff is recommending that the Commission, after public hearing, approve Segment A of LCPA 3-09 as submitted.

The motion to accomplish this recommendation is found on page 2.

STANDARD OF REVIEW

The standard of review for the proposed Implementation Plan amendment is conformance with and adequacy to carry out the policies of the certified Land Use Plan.

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SUMMARY OF PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states:

During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

The proposed changes regarding medical marijuana dispensaries were heard at the following public hearings: Planning Commission meetings of 6/24/09 and 5/27/09; and City Council meetings of 10/6/09, 9/15/09, and 7/21/09. Public testimony at the hearings included concerns that medical marijuana dispensaries would increase criminal activity in the vicinity and raised concerns with regard to impacts on school children.

ADDITIONAL INFORMATION

Copies of the staff report are available online at www.coastal.ca.gov and at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Meg Vaughn in the Long Beach office at (562) 590-5071.

I. STAFF RECOMMENDATION: MOTION & RESOLUTION

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

Approval of IP Amendment Segment A as Submitted

MOTION: *I move that the Commission reject Implementation Plan Amendment No.LGB-MAJ-3-09A for the City of Laguna Beach as submitted.*

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Plan as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify the Implementation Plan Amendment Segment A as Submitted:

The Commission hereby certifies the Implementation Plan Amendment 3-09A for the City of Laguna Beach as submitted and adopts the findings set forth below on grounds that the Implementation Plan amendment Segment A conforms with, and is adequate to carry out, the provisions of 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 Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551(b) of the California Code of Regulations, a resolution for submittal must indicate whether the Local Coastal Program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. City Council Resolution No. 09.77 states that this LCP amendment will take effect upon Commission certification.

III. FINDINGS

The Commission hereby finds and declares as follows:

A. LCP Implementation Plan Amendment Description

The proposed amendment, submitted via City Council Resolution No. 09.077 as reflected in City Council Ordinance No. 1511, requests to add the term "medical marijuana dispensary" to Chapter 25.08 Definitions section of Title 25 (the City's zoning code) of the certified Implementation Plan (IP). In addition, the amendment proposes to prohibit medical marijuana dispensaries as an allowable use in any zoning district in the City by adding Section 25.02.003 to Chapter 25.02 (Establishing Districts and Limiting the Uses of Lands Therein) of Title 25, in the certified IP.

The proposed definition for medical marijuana is lengthy and is attached on page 5 of exhibit 6. In short the definition would include any association organized to provide or assist in the lawful "retail" distribution of medical marijuana as well as the facility or location where the purpose is to dispense marijuana as medication. The definition is proposed to be added at Section 25.08.024 of the IP definitions section.

The language proposed to specifically prohibit this use is to be added to Chapter 25.02 *Establishing Districts and Limiting the Uses of Lands Therein*, at proposed Section 25.02.003 Prohibited Use in any Zone in the City. The proposed language is:

- A. *Medical Marijuana Dispensary Prohibited in All Zones. A medical marijuana dispensary, as defined in Section 25.08.024 of this Title, is not an allowable use within any zone in the City of Laguna Beach and is expressly prohibited in all zones. No other definition or term utilized herein shall be interpreted to allow such use. Each individual zone in the City of Laguna Beach is hereby updated to prohibit medical marijuana dispensaries.*
- B. *Individual Use in Compliance With Compassionate Use Act. Nothing in this section shall be construed to make unlawful an individual's cultivation and/or consumption of medical marijuana in his or her own residence for their own use, or for the use of a qualified patient, if such cultivation, possession, or use is lawful under California Health and Safety Code section 11362.5 through 11362.83, inclusive."*

In short, the portion of the amendment proposed via Ordinance No. 1511 would establish a definition for "medical marijuana dispensary" and would prohibit that use throughout the City.

B. Approval of the Implementation Plan Amendment as Submitted

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

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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 City's Opens Space/Conservation Element portion of the certified LCP Land Use Plan includes policies addressing public access, public recreational opportunities, protection of water quality, and protection of environmentally sensitive habitats including the Open Space/Conservation policies in Topic 3 Public Beach Access and Shoreline Access, Topic 4 Water Quality and Conservation, Topic 5 Parks, and Topic 8 Vegetation and Wildlife Resources. In addition, the Land Use Element portion of the certified LCP Land Use Plan includes policies establishing areas for which a specific use would be appropriate; and addressing community facilities and capital improvements, hazard planning, offshore oil exploration, energy conservation, use of agricultural lands, time share uses, condominium conversions, mixed use development, land recycling, urban design, view preservation, live/work opportunities for artists, external growth pressures, and the City's sphere of influence. Among the goals of the certified LUP is the preservation of the unique community character of the City. In addition, the certified LCP incorporates Guidelines regarding design of hillside development, community and landscaping designs for the South Laguna area, and shoreline protection, among others.

Laguna Beach is recognized as a unique coastal community. The character of this community is defined primarily by its proximity to the sea, small town scale and its focus on the arts. The City's downtown area and South Laguna Village area, as well as the commercial development along Coast Highway, serve as visitor destinations offering shopping, dining, strolling and other visitor opportunities. In addition, the City is known for its many art galleries and festivals that draw visitors from afar and residents alike. The City's main beach and numerous pocket beaches likewise draw both visitors and residents. It is the combination of all these attributes that attracts high numbers of visitors annually.

The City's certified Implementation Plan includes the City's Zoning Code (Title 25). Use prohibitions are appropriately listed in the zoning code. There is no other City land use document, that is not part of the IP, where a use prohibition would be effective. Although the proposed use prohibition is not a use that falls under the Commission's purview or raises any issues with regard to consistency with the LUP, it must, due to the structure of the City's LCP, be placed within the LCP. There is no other place than within the certified IP to effectively place the proposed language prohibiting medical marijuana dispensaries.

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

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the public access or coastal resource policies of the LUP. Neither will it conflict with LUP policies intended to protect community character. Finally, its addition to the IP does not in any way reduce the IP's adequacy in carrying out the provisions of the certified LUP. Therefore, the Commission finds that the proposed amendment, as submitted, does not raise any issues justifying its rejection pursuant to Coastal Act Section 30513.

D. California Environmental Quality Act (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f) and 13555(b)] the Commission's certification of this LCP amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the LCP, as amended, will be consistent with and adequate to carry out the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of CEQA. There are no feasible alternatives under the meaning of CEQA which would reduce the potential for significant adverse environmental impacts. Therefore, the Commission certifies Laguna Beach LCP amendment request 3-09A as submitted.

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RESOLUTION NO. 09.077

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAGUNA BEACH, CALIFORNIA, ADOPTING LOCAL COASTAL
PROGRAM AMENDMENT 09-01 AND REQUESTING ITS
CERTIFICATION BY THE COASTAL COMMISSION.**

WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Planning Commission of the City of Laguna Beach held public hearings to consider the adoption of Laguna Beach Local Coastal Program Amendment No. 09-01, and such amendment was recommended to the City Council for adoption; and

WHEREAS, the City Council after giving notice as described by law, held at least one public meeting regarding the proposed Laguna Beach Local Coastal Program Amendment No. 09-01, and the City Council finds that the proposed amendment is consistent with the Certified Laguna Beach Coastal Land Use Plan and Chapter 6 of the California Coastal Act; and

WHEREAS, the City Council of the City of Laguna Beach intends to implement the Local Coastal Program in a manner fully consistent with the California Coastal Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES RESOLVE AND ORDER as follows:

SECTION 1. That Laguna Beach Local Coastal Program Amendment No. 09-01 is hereby approved, consisting of Ordinance No. 1511 pertaining to medical marijuana dispensaries. A copy of the aforesaid Ordinance is attached hereto as Exhibit "A" and is incorporated by this reference as though fully set forth herein.

SECTION 2. That the California Coastal Commission is hereby requested to consider, approve and certify Local Coastal Program Amendment 09-01 **COASTAL COMMISSION**

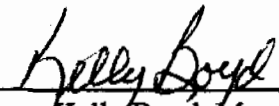
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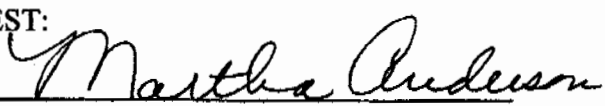
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SECTION 3. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Laguna Beach Local Coastal Program Amendment No. 09-01 will take effect automatically upon Coastal Commission approval, as provided in Pubic Resources Code Sections 30512, 30513 and 30519.

ADOPTED this 6th day of October, 2009.




Kelly Boyd, Mayor

ATTEST:


City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 09.077 was duly adopted at a Regular Meeting of the City Council of said City held on October 6, 2009 by the following vote:

AYES: COUNCILMEMBER(S): Pearson, Iseman, Rollinger, Egly, Boyd
NOES COUNCILMEMBER(S): None
ABSENT COUNCILMEMBER(S): None



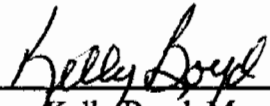
City Clerk of the City of Laguna Beach, CA

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SECTION 3. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Laguna Beach Local Coastal Program Amendment No. 09-01 will take effect automatically upon Coastal Commission approval, as provided in Pubic Resources Code Sections 30512, 30513 and 30519.

ADOPTED this 6th day of October, 2009.



Kelly Boyd, Mayor

ATTEST:



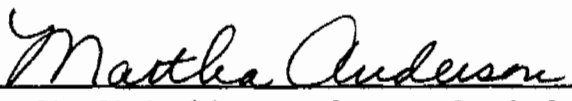
City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 09.077 was duly adopted at a Regular Meeting of the City Council of said City held on October 6, 2009 by the following vote:

AYES: COUNCILMEMBER(S): Pearson, Iseman, Rollinger, Egly, Boyd

NOES COUNCILMEMBER(S): None

ABSENT COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

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EXHIBIT "A"

ORDINANCE NO. 1511

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, AMENDING TITLE 25 OF THE LAGUNA BEACH MUNICIPAL CODE FOR THE PROHIBITION OF MEDICINAL MARIJUANA DISPENSARIES AS AN ALLOWABLE USE IN ANY ZONING DISTRICT AND ADDING SECTION 25.02.003 TO CHAPTER 25.02 AND AMENDING SECTION 25.08.024 OF CHAPTER 25.08 TO ADD A DEFINITION FOR MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES HEREBY
ORDAIN AS FOLLOWS;

SECTION 1: The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this ordinance, and the establishment of the regulations governing medical marijuana dispensaries within the City may have a significant effect on the environment, because the adoption of these regulations imposes criteria and rules on the establishment and operation of medical marijuana dispensaries not currently contained in the City's regulations and does not authorize activities or development not currently permitted under the state or local law. Accordingly, adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the Guidelines (Title 14 Cal. Code of Regs. § 15061(b)(3)).

SECTION 2: City Council hereby finds pursuant to Government Code Section 65853 that the proposed Ordinance set forth in Section 2 below is consistent with the General Plan objectives and policies.

SECTION 3: It is the purpose and intent of this ordinance prohibiting medical marijuana dispensaries in all zones to promote the health, safety, and general welfare of the residents and businesses within the City.

SECTION 4: New Section 25.02.003 is hereby added to Chapter 25.02 of the Laguna Beach Municipal Code to read in its entirety as follows:

"25.02.003 Prohibited Use in any Zone in the City

A. **Medical Marijuana Dispensary Prohibited in All Zones.** A medical marijuana dispensary, as defined in Section 25.08.024 of this Title, is not an allowable use within any zone in the City of Laguna Beach and is expressly prohibited in all zones. No other definition or term utilized herein shall be interpreted to allow such use. Each individual zone in the City of Laguna Beach is hereby updated to prohibit medical marijuana dispensaries.

Individual Use in Compliance With Compassionate Use Act. Nothing in this section shall be construed to make unlawful an individual's cultivation and/or consumption of medical marijuana in his or her own residence for their own use, or for the use of a qualified patient, if such cultivation, possession, or use is lawful

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under California Health and Safety Code sections 11362.5 through 11362.83, inclusive.”

SECTION 5: Section 25.08.024, entitled “Words Beginning with ‘M,’” of the Laguna Beach Municipal Code is hereby amended by adding the following definition for “medical marijuana dispensary” alphabetically to the existing list to read in its entirety as follows:

“Medical Marijuana Dispensary’ shall include the terms ‘Dispensing Collective,’ ‘Dispensing Cooperative,’ ‘Medical Cannabis Collective,’ ‘Medical Cannabis Cooperative,’ ‘Medical Marijuana Collective,’ ‘Medical Marijuana Cooperative,’ or similar term, and shall mean any association, cooperative, affiliation, or collective of persons where multiple ‘qualified patients’ and/or ‘primary care givers’ are organized to provide education, referral, or network services, and facilitate or assist in the lawful, ‘retail’ distribution of medical marijuana. ‘Medical marijuana dispensary’ also means any facility or location where the purpose is to dispense marijuana as a medication that has been recommended by a physician and where marijuana is made medically available to and/or distributed by or to three or more primary caregivers and/or qualified patients, in strict accordance with California Health and Safety Code Sections 11362.5 through 11362.83, inclusive. ‘Medical Marijuana Dispensary’ also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary due to physical or mental disability, for medical purposes in compliance with Health and Safety Code sections 11362.5 through 11362.83, inclusive. For the purposes of this Title, the terms ‘primary caregiver,’ ‘qualified patient,’ and ‘person with and identification card’ shall be as ascribed in Sections 11362.5 through 11362.83, inclusive, of the California Health and Safety Code. The term ‘Medical Marijuana Dispensary’ shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the 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 Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code Sections 11362.5 through 11362.83, inclusive.

SECTION 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions 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 subsections, subdivisions, paragraphs sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

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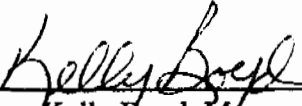
EXHIBIT # A

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SECTION 7: This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption, or until otherwise superseded by action of the City Council or by operation of State Law.

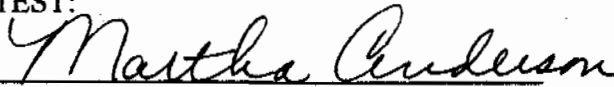
SECTION 8: The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

ADOPTED this 6th day of October, 2009.



Kelly Boyd, Mayor

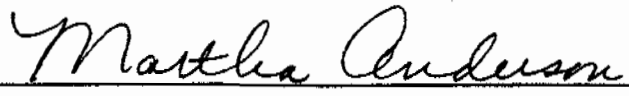
ATTEST:



City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on September 15, 2009, and was finally adopted at a Regular Meeting of the City Council of said City held on October 6, 2009, by the following vote:

AYES: COUNCILMEMBER(S): Pearson, Iseman, Rollinger, Egly, Boyd
NOES COUNCILMEMBER(S): None
ABSENT COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

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