

CALIFORNIA COASTAL COMMISSION

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

Th12b

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original staff report](#)

ADDENDUM

October 31, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: AMENDMENT REQUEST LCP-5-MNB-16-0045-1 FOR THE COMMISSION
MEETING OF THURSDAY, November 3, 2016.

CHANGE TO STAFF REPORT

Commission staff recommends the following revisions to the staff report dated October 13, 2016 in the following paragraphs: In the second sentence of paragraph 1 on page 1, and the last sentence of paragraph 3 on page 1, continued to the top of page 2. Language to be deleted is identified by strike-out, and language to be added is underlined.

Paragraph 1, **Page 1**, make the following revisions:

The requested LCP amendment would add Section A.60.160, expressly prohibiting cultivation of ~~medical~~ marijuana for commercial and non-commercial purposes, and adding and amending definitions to conform to state law.

The last sentence of Paragraph 3 on the top of **Page 2**, make the following revisions:

Consistent with the provisions in the MMRSA, the City has adopted an ordinance prohibiting cultivation of ~~medical~~ marijuana for commercial and non-commercial purposes, prohibiting commercial medical marijuana activity, and amending related definitions to conform to state law.

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Th12b

DATE: October 13, 2016

TO: Commissioners and Interested Persons

FROM: Steve Hudson, Deputy Director, South Coast District
Teresa Henry, South Coast District Manager
Charles Posner, Supervisor of Planning
Mandy Revell, Coastal Program Analyst

RE: Amendment Request No. 2-16 (LCP-5-MNB-16-0045-1) to the City of Manhattan Beach Local Coastal Program (LCP), for Commission Action at its November 3, 2016 meeting in Half Moon Bay.

Local Coastal Program Amendment No. 2-16 (Minor)

The City of Manhattan Beach is requesting that the Commission certify an amendment to the implementing ordinances portion of the Manhattan Beach certified Local Coastal Program (LCP). The requested LCP amendment would add Section A.60.160, expressly prohibiting cultivation of medical marijuana, prohibiting commercial medical marijuana activity, and adding and amending definitions to conform to state law. Although the City's Certified LCP is silent on the operation of medical marijuana dispensaries in the coastal zone, the City prohibited medical marijuana dispensaries in *all zones* in the City in 2008 as outlined in section 10.60.160 of the City's Municipal Code. The proposed LCP amendment will continue the prohibition on medical marijuana dispensaries and extend the prohibition to cultivation. Please see **Exhibit A** to this staff report for the amendment language.

Local Coastal Program Amendment Request No. 2-16, submitted with City Council Resolution No. RES-16-0001, and contained in City Council Ordinance No. ORD-16-0036, affects only the implementing ordinances portion of the certified LCP and does not propose any rezoning or land use changes. The Manhattan Beach City Council held a public hearing for the zoning code changes and the LCP amendment on January 5, 2016 and passed City Council Resolution No. RES-16-0001 authorizing City staff to submit the LCP amendment to the Coastal Commission (**Exhibit B**). The City Council adopted Ordinance No. ORD-16-0001 on January 19, 2016.

Analysis

The Medical Marijuana Regulation and Safety Act (MMRSA) of 2015 establishes the State licensing requirements for commercial medical marijuana uses and requires all medical marijuana-related business to also obtain a local license or permit to operate. The MMRSA also contains a provision allowing local governments to take an action by a date certain to prohibit commercial medical marijuana activities within its jurisdiction if it wishes to do so; otherwise the State will become the sole licensing authority within that jurisdiction. Consistent with the provisions in the MMRSA, the City has adopted an ordinance

prohibiting cultivation of medical marijuana, prohibiting commercial medical marijuana activity, and amending related definitions to conform to state law.

The Executive Director has determined that the City of Manhattan Beach LCP Amendment No. 2-16 is a minor LCP amendment. The LCP amendment has been determined to be a “minor” LCP amendment because the proposed amendment does not raise issues with regard to the coastal resource or public access policies of the City’s certified LCP, including protection of community character, which is a fundamental objective of the City’s LCP. The proposed LCP amendment is consistent with the certified Land Use Plan (LUP), would make the City’s development regulations more specific, and would not change the kind, location, intensity or density of any uses. The proposed amendment merely provides more specifics and additional clarity regarding this prohibition. The proposed changes to the implementing ordinances are attached as **Exhibit A** (Ordinance No. 16-0001).

The proposed amendment will clarify the City’s definitions of, and would not change the density of, development allowed in the City’s residential zones. The proposed changes will not result in any change in the kind, location, intensity, or density of uses. The proposed changes are consistent with the City of Manhattan Beach certified Land Use Plan (LUP) and Implementation Measures which set forth the following policies:

POLICY II.1: *Control development within the Manhattan Beach coastal zone.*

SECTION A.01.030 A.1: *Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone*

SECTION A.01.030 A.2.: *Foster convenient, harmonious, and workable relationships among land uses*

The proposed amendment does not raise issues with regard to the coastal resource or public access policies of the certified Land Use Plan (LUP). Medical marijuana dispensaries are already prohibited within the Manhattan Beach city limits. Therefore, the Commission finds that the proposed amendment, as submitted, does not raise any LUP consistency issues and does not change the kind, location, intensity, or density of use of land.

Procedures

Pursuant to Section 30514(c) of the Coastal Act and Section 13554(a) of Title 14 of the California Code of Regulations, the Executive Director has determined that the proposed LCP amendment is "minor" in nature. Section 13554(a) of Title 14 of the California Code of Regulations defines a minor LCP amendment as changes in wording which make the use as designated in the zoning ordinances, zoning district maps or other implementing actions more specific and which do not change the kind, location, intensity, or density of use and are consistent with the certified LUP.

When the Executive Director determines that an amendment is minor, that determination must be reported to the Commission. If one-third of the appointed members of the Commission request that it be processed as a major LCP amendment, then the amendment shall be set for a future public hearing; if less than one-third of the appointed members of the Commission object to the minor LCP amendment

City of Manhattan Beach
LCP Amendment No. 2-16 (Minor)
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determination, then the amendment is deemed approved, and it becomes a certified part of the LCP immediately. The Executive Director will report this minor LCP amendment determination, and any comments received on it, to the Coastal Commission at its November 2-4, 2016 meeting in Half Moon Bay. For any questions or additional information regarding the proposed amendment or the process under which it is being certified, please contact Mandy Revell at the South Coast District Office in Long Beach.

ORDINANCE NO. 16-0001

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING LOCAL COASTAL PROGRAM SECTION A.60.160
(MEDICAL MARIJUANA DISPENSARIES) TO EXPRESSLY
PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, PROHIBIT
COMMERCIAL MEDICAL MARIJUANA ACTIVITY, AND AMENDING
DEFINITIONS TO CONFORM WITH STATE LAW

RECITALS

1. Manhattan Beach Local Coastal Program (LCP) Section A.60.160 prohibits medical marijuana dispensaries, which are defined as any facility or location where medical marijuana is cultivated or made available to a qualified patient, a person with an identification card, or a primary caregiver as those terms are defined by state law.
2. In 2015, the California State Legislature enacted the Medical Marijuana Regulation and Safety Act which reinforces that cities may prohibit dispensaries, but requires a city to adopt local land use regulations if that city wants to prohibit or regulate the cultivation of medical marijuana.
3. The City of Manhattan Beach desires to prohibit the cultivation of medical marijuana.

NOW THEREFORE, THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS
AS FOLLOWS:

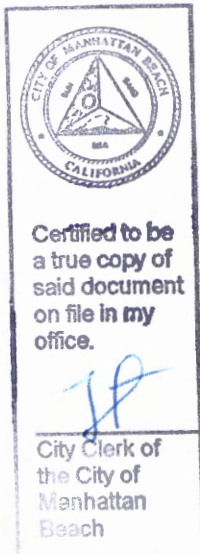
Section 1. LCP Section A.60.160 (Medical Marijuana Dispensaries) is amended in its entirety to read as follows:

"A.60.160 Medical marijuana dispensaries.

A. Definitions.

1. "Commercial medical marijuana activity" shall have the same meaning as "commercial cannabis activity" that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product for commercial purposes.

2. "Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.



COASTAL COMMISSION

EXHIBIT # A
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3. "Dispensary" shall mean any business, facility, location, office, store or establishment where medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical marijuana and medical marijuana products as part of a retail sale.

"Dispensary" shall also mean any facility, residence, location, or site where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.* as such sections may be amended from time to time.

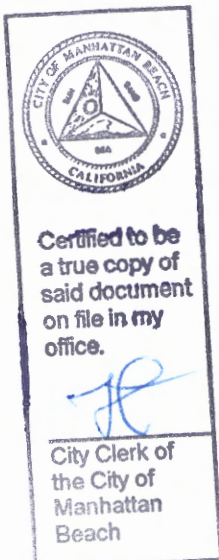
4. "Identification card" is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

5. "Marijuana" shall have the same meaning as "cannabis" as set forth in California Business and Professions Code section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the 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. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana. "Marijuana" also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Section, "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Section, "marijuana" does not mean "industrial hemp" as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

6. "Medical Marijuana Regulation and Safety Act" or "MMRSA" shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

7. "Medical marijuana product" shall have the same meaning as "cannabis product" or "medical cannabis product" as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

8. "Primary caregiver" is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.



9. "Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

B. Prohibition.

1. Medical marijuana dispensaries are prohibited.
2. Commercial medical marijuana activity of any type or nature is expressly prohibited. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the City. This Section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.
3. To the extent that it is not already prohibited by subsections 1 and 2 above, indoor and outdoor cultivation of marijuana for commercial or non-commercial purposes is expressly prohibited.

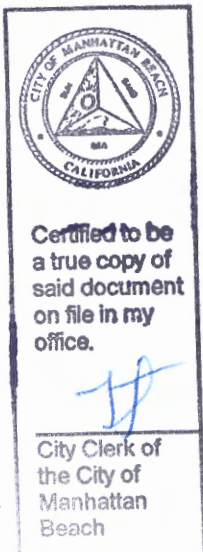
C. Civil Penalties.

In addition to any other remedies provided by state law, any violation of this Section may be enforced by civil action brought by the City, including but not limited to:

1. Injunctive relief.
2. Civil penalties.
3. Nuisance abatement.
4. Recovery of costs and attorney fees incurred in enforcing this Section."

Section 2. CEQA. Pursuant to the California Environmental Quality Act ("CEQA"), and the City's local CEQA Guidelines, staff has determined that the proposed code amendments are exempt from the requirements of CEQA. It can be seen with certainty that there is no possibility that the adoption of the code amendments, and the zoning provisions established hereby, may have a significant effect on the environment, because the code amendments will only impose greater limitations on uses allowed in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. The City Council has reviewed the staff's determination of exemption and based on its own independent judgment, concurs in staff's determination that the proposed code amendments are exempt from CEQA. The adoption of the code amendments is therefore not subject to CEQA review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

Section 3. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not



affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

Section 4. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

Section 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED by the Manhattan Beach City Council on January 19, 2016.

AYES: Powell, Howorth, Lesser, D'Errico and Mayor Burton

NOES: None

ABSENT: None

ABSTAIN: None

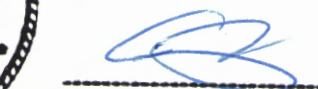


MARK BURTON
Mayor

ATTEST:


LIZA TAMURA
City Clerk

Certified to be a true copy
of the original of said
document on file in my
office.


City Clerk of the City of
Manhattan Beach, California

COASTAL COMMISSION

EXHIBIT # A
PAGE 4 OF 4

RESOLUTION NO. 16-0012

A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL AUTHORIZING SUBMISSION OF ORDINANCE NO. 16-0001 TO THE CALIFORNIA COASTAL COMMISSION TO INCORPORATE AMENDMENTS TO THE LOCAL COASTAL PROGRAM (LCP) TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, PROHIBIT COMMERCIAL MEDICAL MARIJUANA ACTIVITY, AND AMENDING DEFINITIONS TO CONFORM WITH STATE LAW

THE MANHATTAN BEACH CITY COUNCIL RESOLVES AND FINDS AS FOLLOWS:

SECTION 1. The City Council conducted a public hearing pursuant to applicable law on January 5, 2016 to consider amendments to the Local Coastal Program (LCP) to amend Section A.60.16012 (Medical Marijuana Dispensaries) to expressly prohibit cultivation of medical marijuana, prohibit commercial medical marijuana activity, and add and amend definitions to make them consistent with state law. At the January 19, 2016 regular meeting, the City Council adopted Ordinance No. 16-0001.

SECTION 2. The proposed zone text amendments are exempt from the California Environmental Quality Act (CEQA) requirements pursuant to CEQA guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. The proposed LCP amendments will amend existing medical marijuana dispensary definitions, and add a prohibition on cultivation of medical marijuana and commercial medical marijuana activity in all zones.

SECTION 3. The City Council finds that the Amendments to the LCP are consistent with Policy II.1 of the LCP Policies and Implementation Measures which states "Control Development within the Manhattan Beach coastal Zone", as well as Section A.01.030 A.1 "Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone;" A.2 "Foster convenient, harmonious, and workable relationships among land uses;" B. "Promote the economic stability of existing land uses that are consistent with the Local Coastal Plan and protect them from intrusions by inharmonious or harmful land uses," and C. "Prevent excessive population densities and overcrowding of land or buildings," and Section A.12.010 B. "Ensure adequate light, air, privacy, and open space for each dwelling, and protect residents from the harmful effects of excessive noise, population density, traffic congestion, and other adverse environmental effects."

SECTION 4. The City Council certifies that the subject amendment will be implemented in a manner fully in conformity with the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Coastal Program.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution.

SECTION 5. The City Council hereby directs the City Manager or his designee to submit the LCP amendment memorialized in Ordinance No. 16-0001 to the California Coastal Commission for certification in conformance with state law.

PASSED, APPROVED AND ADOPTED January 19, 2016.

AYES: Powell, Howorth, Lesser, D'Errico and Mayor Powell

NOES: None

ABSENT: None

ABSTAIN: None



MARK BURTON
Mayor

ATTEST:


LIZA TAMURA
City Clerk

Certified to be a true copy
of the original of said
document on file in my
office.


City Clerk of the City of
Manhattan Beach, California
COASTAL COMMISSION