

CALIFORNIA COASTAL COMMISSION

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W10a

Prepared March 25, 2016 (for April 13, 2016 Hearing)

To: Commissioners and Interested Persons

From: Susan Craig, District Manager
Mike Watson, Coastal Planner

Subject: City of Carmel-by-the-Sea (Carmel) LCP Amendment Number LCP-3-CML-16-0005-1 Part B (Medical Marijuana).

Proposed Amendment

The City of Carmel (the “City” or “Carmel”) proposes to modify the Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning code) to delete IP Section 17.14.040 subsection 5 and replace with new section 17.14.240, clarifying the rules regarding medical marijuana in Carmel. The existing LCP prohibits the operation of medical marijuana dispensaries in the City. The proposed amendment will continue the prohibition on medical marijuana dispensaries and extend the prohibition to cultivation, delivery, and all marijuana-related commercial activities in the City. See Exhibit 1 for the proposed amendment text.

Minor LCP Amendment Determination

Pursuant to Title 14 of California Code of Regulations (CCR) Section 13555, the Executive Director may determine that a proposed LCP amendment is “minor.” 14 CCR Section 13554 defines minor LCP amendments. Among other things, minor LCP amendments include:

14 CCR Section 13554(a). 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 which are found by the Executive Director of the Commission or the Commission to be consistent with the land use plan as certified by the Commission.

If 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 determination, then the amendment is deemed approved, and it becomes a certified part of the LCP immediately (in this case, on April 13, 2016).

The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is minor.

The Medical Marijuana Regulation and Safety Act (MMRSA) of 2015 establishes a State licensing scheme for commercial medical marijuana uses and requires all medical marijuana-

related businesses 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 the cultivation, sale, and distribution of medical marijuana, including all commercial medical marijuana uses in the City limits.

The proposed amendment does not raise issues with regard to the coastal resource or public access policies of the certified Land Use Plan (LUP), including protection of community character, which is a fundamental objective of Carmel's LCP. Medical marijuana dispensaries are already prohibited within the Carmel city limits. The proposed amendment merely provides more specifics and additional clarity regarding this prohibition. 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.

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. The City has determined that the project is exempt from further review under CEQA, pursuant to Section 15305 of the Public Resources Code, "Minor Alterations in Land Use Limitations," and a Notice of Exemption has been prepared. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this minor LCP amendment determination, and any comments received on it, to the Coastal Commission at its April 13, 2016 meeting in Santa Rosa. If you have any questions, comments, or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Mike Watson at the Central Coast District Office in Santa Cruz.

Exhibit:

Exhibit 1: Proposed Amendment Text

RECEIVED

FEB 17 2016

CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

ORDINANCE 2016-003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA,
CALIFORNIA, AMENDING SECTION 17.14.40 AND ADDING SECTION 17.14.240 OF THE
CARMEL-BY-THE-SEA MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA
DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL
MARIJUANA USES IN THE CITY.

Section 1. Findings and Purpose. The City Council finds and declares as follows:

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA").

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code §11362.7 et seq. and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

WHEREAS, in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana..." The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate,

manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

WHEREAS, on October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter "MMRSA"). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

WHEREAS, the City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

WHEREAS, the limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

WHEREAS, on April 6, 2010, the Carmel-by-the-Sea City Council unanimously adopted Ordinance No. 2010-02, to prohibit medical marijuana distribution facilities within any zone within the corporate boundaries of the City of Carmel-by-the-Sea.

WHEREAS, while the City Council believes that cultivation and all commercial medical marijuana uses are already prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

WHEREAS, the Planning Commission held a duly noticed public hearing on November 18, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

WHEREAS, the City Council held a duly noticed public hearing on this Ordinance on December 1, 2015, at which time it considered all evidence presented, both written and oral.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

Section 3. Chapter 17.14 of the Carmel-by-the-Sea Municipal Code is amended in its entirety to read as follows:

17.14.040 Additional Use Regulations.

A. All Uses.

~~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.~~

17.14.240 Medical Marijuana.

- A. Dispensaries Prohibited. No medical marijuana or cannabis dispensary or distribution facility as defined in Section 17.68.040 of the Carmel-by-the-Sea Municipal Code or in Business & Professions Code § 19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Carmel-by-the-Sea. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility.
- B. Commercial Marijuana Activities Prohibited. Commercial marijuana or cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transport, delivery, dispensing, transfer, distribution, or sale of medical cannabis or medical cannabis products all as defined under Business & Professions Code Sec. 19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Carmel-by-the-Sea. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.
- C. Deliveries of Medical Marijuana Prohibited. Commercial marijuana or cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transport, delivery, dispensing, transfer, distribution, or sale of medical cannabis or medical cannabis products all as defined under Business & Professions Code Sec. 19300.5, as the same

may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Carmel-by-the-Sea. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

- D. Cultivation of Marijuana Prohibited. To the extent not already covered by Section 17.14.240.B, cultivation of marijuana or cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Carmel-by-the-Sea. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include planting, growing, harvesting, drying, curing, grading or trimming of cannabis.
- E. Intent. This Chapter is meant to prohibit all medical marijuana or commercial cannabis activities, including but not limited to those for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.
- F. Unlawful Uses. Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.

Section 4. Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

Section 5. CEQA. This ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 6. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this

Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.


Section 7. To the extent the provisions of the Carmel-by-the-Sea Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of adoption and shall post a certified copy of this Ordinance, including the vote for and against same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

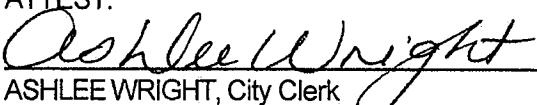
Section 9. This ordinance shall be in full force and effect thirty-one (31) days after passage.

INTRODUCED on the 1st day of December, 2015 and ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 5th day of January, 2016 by the following roll call vote:

AYES:	COUNCIL MEMBERS:	Beach, Dallas, Talmage, Theis, Burnett
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED


JASON BURNETT, Mayor

ATTEST:


ASHLEE WRIGHT, City Clerk