

CALIFORNIA COASTAL COMMISSION

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September 15, 2017

Th17a**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
ALEX LLERANDI, COASTAL PLANNER, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP AMENDMENT
No. LCP-6-SAN-17-0050-2 (Retail Sales/Marijuana Outlets) for Commission
Meeting of October 11-12, 2017**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on June 28, 2017. At the August 2017 Commission hearing, the Commission approved a one-year time extension. As such, the last date for Commission action on this item is the August 2018 hearing. No changes are being proposed to any land use plan component by the amendment.

SUMMARY OF AMENDMENT REQUEST

The City has adopted code amendments to create a new separately regulated commercial service – retail marijuana outlets – in a limited number of industrial and commercial zones that avoids visitor-serving areas (i.e. regional commercial, office commercial, community commercial and light industrial). The proposed ordinance does not allow marijuana outlets in any residential, open space, or agricultural zones. Specifically, the proposed ordinance would allow for the permitting of marijuana outlets under renewable 5-year Conditional Use Permits subject to strict criteria regarding, among other aspects, signage, hours of operation, distance from sensitive uses (i.e. schools, community parks, libraries, etc.), and sufficient lighting and security. The ordinance is applicable to certain industrial and commercial zones only and there are no modifications being proposed to the development standards for the underlying zone classifications.

SUMMARY OF STAFF RECOMMENDATION

For the City of San Diego's Local Coastal Program, the Land Development Code (LDC) constitutes the primary element of the City's certified implementation plan and it represents an integrating feature for the multiple community plan/land use planning areas. The proposed code amendments will introduce the permitting of marijuana outlets in

limited industrial and commercial zones. Marijuana outlets will be classified as a commercial use, but they are currently prohibited within the City of San Diego, with only medical marijuana cooperatives currently allowed to operate with conditional use permits.

Communities in the coastal zone with industrial and commercial zoning that could possibly house medical marijuana consumer cooperatives under the City's proposed amendment include Barrio Logan, Carmel Valley, Mira Mesa, North City, Otay Mesa/Nestor, Pacific Beach, San Ysidro, Sorrento Valley, and Torrey Pines. In past Commission actions regarding LCP amendments addressing marijuana, the Commission has consistently found that the subject of marijuana and its availability to the public was not a Coastal Act issue. The proposed code amendments do not modify any of the otherwise required development standards, such as resource protection measures, parking, or landscaping for other commercial uses. According to the City's mapping analysis of potential sites for marijuana outlets, all of the potential sites for this use are located outside the Beach Impact Area that includes the two to three blocks along the coast where parking demand is the highest. Therefore, the proposed amendment can be found consistent with the City's certified land use plans and no adverse impacts to any coastal resources, including public access, are anticipated. Staff therefore recommends the Commission approve the proposed LCP amendment as submitted.

The appropriate resolution and motion may be found on Page 4. The findings for approval of the Implementation Plan Amendment as submitted also begin on Page 4.

BACKGROUND

The City's first Implementation Plan (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) that includes, among other components, Chapters 11 through 14 of the municipal code. It replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000. For the subject amendment, Commission staff was briefed by City staff on its drafting and consultation between the respective offices continued through its adoption.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-17-0050-2 may be obtained from **Alexander Llerandi**, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January, 2000.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-SAN-17-0050-2 for the City of San Diego as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program 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 Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans, and certification of the Implementation Program Amendment will meet the requirements of 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 Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program, as amended.

PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**A. AMENDMENT DESCRIPTION**

In June 2014, the Commission approved LCP Amendment No. LCP-6-SAN-14-0605-1 creating a new separately regulated commercial use in the City of San Diego – medical marijuana consumer cooperatives. Since that time, California voters approved Proposition 64, legalizing recreational use of marijuana by people 21 years of age or older. In order to prepare for the effective date of the proposition (January 1, 2018), the City has adopted code amendments to modify the certified LCP so as to convert the medical marijuana consumer cooperatives into a new separately regulated commercial service – marijuana outlets – in a limited number of industrial and commercial zones that avoid visitor-serving areas (i.e. regional commercial, office commercial, community commercial and light industrial). The proposed ordinance does not allow marijuana

outlets in any residential, open space, or agricultural zones. Because the City is using the existing regulations governing medical marijuana consumer cooperatives as the foundation for the new set of regulations, there is a substantial overlap between what was approved by the Commission in June 2014 and what the City is proposing now. Specifically, just as with the medical marijuana consumer cooperatives, the proposed ordinance would allow for the permitting of marijuana outlets under renewable 5-year Conditional Use Permits subject to strict criteria regarding, among other aspects, signage, hours of operation, distance from sensitive uses (i.e. schools, libraries, etc.), and sufficient lighting and security. The ordinance is applicable to certain industrial and commercial zones only and there are no other modifications being proposed to the development standards for commercial uses. In addition, no changes are being proposed to any of the other existing industrial and commercial uses that could be allowed in all industrial and commercial zones. Because the marijuana outlets will also address the medical marijuana cooperatives, those regulations are being deleted in this LCP amendment.

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The City of San Diego's LCP consists of several community plans for the various communities within the City's Coastal Zone. For local governments, a key concern with the regulation of marijuana sales is the associated demand for the product and resulting traffic generation in and out of a community and parking needs for such uses. Relative to circulation and coastal access, many of the certified community plans contain provisions that address energy consumption and vehicle miles traveled within the coastal zone. For example, Goal 7.5 G-1 in Section 7.5 of the Centre City/Downtown Community Plan – Transportation Demand Management – echoes Section 30253 of the Coastal Act when it calls for development to:

Encourage transportation demand management strategies to minimize energy consumption, vehicle miles traveled, and traffic contributions from new and existing development.

The Coastal Element of the Naval Training Center/Precise Plan states, in part:

F. Program For Development

[...]

2. Policies

New development shall be located within, contiguous with, or in close proximity to existing developed areas. New development shall be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Boards as to each particular development, and shall minimize energy consumption and vehicle miles

traveled.

The proposed amendment would introduce the permitting of marijuana outlets within certain industrial and commercial zones in the City of San Diego. The request relates to a broader effort by the City of San Diego to manage and regulate the changing legal and cultural landscape related to recreational marijuana and its availability to the public. The proposed changes to the use regulations are only applicable to certain industrial and commercial zones and would permit marijuana outlets, subject to restrictions on siting, signage, hours of operation, and security, among other factors. No other changes to the development regulations, such as landscaping or parking standards, of the industrial or commercial zones are being made.

Within the Coastal Zone, there are industrially and commercially zoned properties within the Barrio Logan, Carmel Valley, Mira Mesa, North City, Otay Mesa/Nestor, Pacific Beach, San Ysidro, Sorrento Valley, and Torrey Pines communities that could potentially meet the siting criteria for housing a marijuana outlet. The City expects most, if not all, of the potential business operators to utilize existing structures.

In past Commission actions regarding LCP amendments addressing marijuana distribution, the Commission has consistently found that the subject of marijuana its availability to the public is not a Coastal Act issue. Nevertheless, under the proposed LCP amendment, only four marijuana outlets would be permitted in any city district (of which there are nine), for a maximum total of thirty-six marijuana outlets in the entire city. Of those nine city districts, only four have portions within the City's coastal zone, and a very small fraction of the area within the City's coastal zone has the requisite industrial or commercial zoning, in conjunction with meeting the siting criteria, eligible for housing a marijuana outlet. None of the potential zones for possible marijuana outlets are in the Beach Impact Overlay Zone, the area of the coastal zone identified by the LCP as most sensitive to public parking impacts and thus requiring more stringent parking requirements to protect coastal access.

With regard to a LCP containing use-specific location criteria in general, there are numerous other specially regulated uses, such as educational facilities or hospitals, where such siting and distance factors are normally found in zoning codes. These elements reflect local concerns; and, where local governments have imposed such locational criteria and use limitations, the Commission has not found there to be a Coastal Act issue. Thus, adverse impacts to coastal resources, conflicts with priority uses, or public access are not anticipated. Therefore, the proposed amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans and may be approved as submitted.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval

program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP as amended, does conform to CEQA provisions. At the local level, the City found that the environmental review completed at the time of the original adoption of the Land Development Code remained valid and sufficient. The City concluded that the proposed amendment would not result in a substantially changed project, would not result in new impacts or changed circumstances that would require a new environmental document. In the case of the subject LCP amendment request, the Commission also finds that approval of the LCP amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for any impacts which have not been explored and the LCP amendment, as submitted, can be supported.