

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



W19b

Prepared January 19, 2018 for February 7, 2018 Hearing

To: Commissioners and Interested Persons

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

**Subject: De Minimis Amendment Determination for City of Carmel-by-the-Sea LCP
Amendment Number LCP-3-CML-17-0058-1 (Cannabis Regulations)**

Proposed Amendment

The City of Carmel-by-the-Sea (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 17.14.240 (Medical Marijuana) and replace it with new IP Section 17.53 (Cannabis) to regulate cannabis activities. The existing LCP prohibits the operation of medical marijuana dispensaries, marijuana cultivation, and marijuana-related commercial activities in the City. The proposed amendment will extend the existing prohibitions on medical marijuana dispensaries and marijuana-related commercial activities to commercial recreational dispensaries and activities, but will allow for the personal cultivation of up to six cannabis plants inside a private residence or inside a residential accessory structure. The proposed amendment is intended to ensure consistency with changes in State law that took effect in January 2018 regarding personal cannabis cultivation. The proposed amendment also adds a number of definitions to the LCP regarding cannabis. See **Exhibit A** for the proposed amendment text.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is “de minimis.” In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and

3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more Commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (in this case, on February 7, 2018).

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis. Each of the de minimis criteria is discussed briefly below:

1. **No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:** The proposed amendment would add standards related to recreational cannabis use in the City as allowed/required by Proposition 64 of 2016: The Adult Use of Marijuana Act (AUMA). Proposition 64 allows individuals to possess, use, and cultivate recreational cannabis in specified amounts, and establishes a regulatory system similar to the medical cannabis system established in 2015. Under AUMA, recreational cannabis cultivators, manufacturers, distributors, and retailers may operate lawfully with a state license and in accordance with local ordinances. Local governments may act to regulate (including to prohibit) said industries but may not entirely ban private indoor residential cultivation and use. Said restrictions and/or prohibitions must be in place prior to January 2018; otherwise, the State will become the sole licensing authority within that jurisdiction. The proposed amendment extends the LCP's existing prohibitions on medical dispensaries and commercial cannabis activities to recreational dispensaries and activities as well, but allows for personal residential indoor cultivation of six marijuana plants, consistent with the provisions in the AUMA.

The proposed amendment, as submitted, does not raise issues with regard to the coastal resources, including public access or the protection of community character, which are fundamental objectives in the City of Carmel. As such, the proposed amendment is consistent with the policies of Chapter 3 of the Coastal Act.

2. **Provision of public notice:** The City provided public notice in advance of the City Council hearings (held on October 3, 2017 and December 5, 2017) where the proposed amendment was considered. For the City Council hearings, a newspaper advertisement notice was printed on September 22, 2017 and November 24, 2017. The amendment submittal was subsequently received by the Commission on January 11, 2018 (and filed as complete on January 11, 2018), and therefore, the 21-day noticing requirement has been satisfied.
3. **No change in use of land or allowable use of property:** Given that (medical) cannabis facilities and activities are already expressly prohibited in the City of Carmel's LCP, extension of the prohibition to commercial recreational cannabis facilities¹ and activities

¹ Commercial recreational marijuana activities and facilities, while not explicitly prohibited in the current LCP, are not listed as allowable uses in any of the LCP's commercial zoning districts and as such are already currently not

does not constitute a change in use of land. With respect to the residential cultivation of marijuana plants, the cultivation of plants is allowable in residentially-zoned districts, and this LCPA just extends this already existing use to marijuana plants. Thus, no change in use is proposed by this amendment.

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 (14 California Code of Regulations Section 15251(f)). The City exempted the proposed amendment from environmental review under CEQA (*See* Pub. Res. Code Section 21080.9). 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 de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its February 7, 2018 meeting at in Cambria. If you have any questions 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. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by February 2, 2018.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on January 11, 2018. It amends the IP only and the 60-day action deadline is March 12, 2018. (*See* Pub. Res. Code Sections 30513, 30514(b).) Thus, unless the Commission extends the action deadline (it may be extended by up to one year per Pub. Res. Code Section 30517), the Commission has until March 12, 2018 to take a final action on this LCP amendment.

Exhibit

Exhibit A: Adopted Ordinance and Proposed Amendment Text

allowed in the City. The proposed amendment will merely add language to the LCP to *explicitly* state that commercial marijuana activities and facilities are not allowed in the City (which is already the case).