

CALIFORNIA COASTAL COMMISSION

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DATE: August 24, 2018

TO: Coastal Commissioners and Interested Persons

FROM: John Ainsworth, Executive Director
Alison Dettmer, Deputy Director
Robert S. Merrill, North Coast District Manager
Cristin Kenyon, Supervising Analyst

**SUBJECT: De Minimis Amendment Determination for City of Eureka
LCP Amendment No. LCP-1-EUR-18-0057-1 (Cannabis Retail)**
For the Commission meeting of September 12, 2018 in Fort Bragg

EUREKA’S PROPOSED AMENDMENT

The City of Eureka proposes to amend the Implementation Plan (IP) portion of the City’s certified Local Coastal Program (LCP) to remove an existing limit on the number of use permits that can be issued in a six-month period for cannabis retail facilities.

In December 2017, the Commission approved an amendment to the City’s certified IP to establish regulations for cannabis indoor cultivation, manufacturing, testing, research and development, distribution, retail, and microbusiness facilities; and to allow these uses in certain zoning districts (LCP Amendment No. LCP-1-EUR-17-0063-2). The amendment (1) added a new Article 30 to the City’s IP entitled “Cannabis” that includes regulations and licensing requirements for commercial cannabis facilities; and (2) amended Article 29 (Coastal Development Permit Procedures) of the City’s certified IP to add twelve¹ commercial cannabis use types as either permitted or conditional uses in six² different commercial and industrial zoning districts. Cannabis retail facilities are one of the twelve commercial cannabis use types that were added. Cannabis

¹ The twelve types of commercial cannabis facilities include: retail facilities; testing facilities; distribution facilities with cannabis on site; distribution facilities with no cannabis on site (transportation only); two indoor cultivation facility types (not more than 10,000 square feet of cultivation area, and not more than 5,000 square feet); four manufacturing facility types (non-volatile, more than 5,000 square feet of floor area; non-volatile, 5,000 square feet or less; volatile, large; and volatile, small); and two mixed-use use types (“microbusiness” and “research and development”) which allow for combinations of other facility types.

² Zoning districts where commercial cannabis facilities are allowed include the Office and Multi-Family Residential, Waterfront Commercial, Neighborhood Commercial, Service Commercial, Limited Industrial and General Industrial Districts.

retail facilities were added as a conditional use in the Neighborhood Commercial, Service Commercial, Limited Industrial and General Industrial Districts.

As certified by the Commission, section 10-5.3008 of Article 30 currently only allows individuals and organizations invited by the Eureka City Council to submit applications for use permits for cannabis retail facilities and sets up a process for selecting who will receive invitations to apply for permits. Under this process, the City issues a request for proposals, individuals or organizations interested in operating cannabis retail facilities prepare proposals, a committee reviews and evaluates the proposals and returns to the City Council with ranked recommendations of the invitations. Based on the committee's recommendations, the City Council invites any number of proposals to submit permit applications. In addition, section 10-5.3008 of Article 30 currently limits the number of use permits that can be issued to operate cannabis retail facilities to two in a six-month period.

Under the proposed amendment, section 10-5.3008 of Article 30 would continue to only allow cannabis retail facilities invited by the City Council to submit permit applications, but would no longer limit the number of use permit applications that could be approved in a six-month period. In addition, the proposed amendment makes certain clarifications to the ordinance, including clarifying: (1) that not only applicants for use permits for cannabis retail facilities, but applicants for commercial cannabis licenses and all other City permits including use permits required for such facilities must be invited by the City Council to apply; (2) that the committee shall be appointed by the City Manager; (3) that the committee shall review each proposal based on criteria contained in the City's request for proposal or qualifications and that the committee may interview the applicants; and (4) that the committee's recommendations shall be presented to the City Council by the Development Services Director.

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 offsite 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 determination, the amendment shall be set for public hearing. If three or more commissioners do not object to the de minimis determination, the amendment will be deemed approved, and will become part of the certified LCP 10 days after the date of the Commission meeting (in this case, the effective date would be September 22, 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:

Although the proposed amendment removes a limitation on the rate at which the City can issue use permits for cannabis retail facilities, the IP as amended continues to require use permits for cannabis retail facilities and to allow the City to receive use permit applications for cannabis retail facilities by invitation only, thus retaining the City's discretion to deny any and all facility proposals.

Cannabis retail facilities are a conditional use in the Neighborhood Commercial, Service Commercial, Limited Industrial and General Industrial Districts. Potential coastal resource impacts of cannabis retail facilities in general commercial and industrial zones include impacts to coastal access parking, visual resources and water quality. As currently certified, Article 30 includes protective standards to address cannabis-specific concerns to ensure the protection of these coastal resources,³ and none of these standards are being removed by the proposed amendment.

The proposed amendment also does not affect coastal development permitting requirements. Pursuant to Article 29, Section 10-5.29302 of the certified IP, development in the coastal zone requires a CDP. Article 29, section 10-5.2906.2 of the certified IP defines development consistent with the Coastal Act to include, among other activities, the construction of any structure and a change in the density or intensity of use of land. In addition, the City's IP expressly states that projects requiring a use permit in the coastal zone also require a CDP (Title 10, Chapter 5, Article 24, Section 10-5.2401). As cannabis retail facilities require a use permit in all districts in which they are an allowable use, all proposed cannabis retail facilities will require CDP authorization. Coastal development permit application review will evaluate specific impacts to coastal access parking and visual and water resources that would result from individual cannabis retail facilities, and ensure that projects comply with the resource protection policies and regulations of the certified LCP. Therefore, the proposed amendment will not have an impact either individually or cumulatively on coastal resources and is consistent with the policies of Chapter 3 of the Coastal Act.

2. Provision of public notice: Newspaper publication notices were printed in the Eureka Times Standard on March 30, 2018 for the Planning Commission hearing (held on April 9, 2018) and April 20, 2018 for the City Council hearing (held on May 1, 2018). The amendment was subsequently received by Commission staff on July 3, 2018, thus satisfying the 21-day noticing requirement under Coastal Act §30514(d)(1)(A). In compliance with Coastal Act §30514(d)(1)(A), the newspaper notices contained a brief description of the proposed amendment, specified the dates and places where comments would be accepted on the proposed amendment (i.e. the dates and places of the public hearings), and stated where the text of the proposed amendment is available for public review. The newspaper notices also meet the requirements of Coastal Act §30514(d)(1)(A)(i), which requires that newspaper

³ See the findings for LCP Amendment No. LCP-1-EUR-17-0063-2 (the findings can be accessed online at <https://www.coastal.ca.gov/meetings/agenda/#/2017/12>)

notice to be published at least once in a newspaper of general circulation in the area affected by the proposed amendment.

- 3. No change in use of land or allowable use of property:** The proposed amendment removes a limit on the number of retail cannabis facility use permits that can be issued in a six-month period and clarifies the review process for cannabis facilities, but the amendment does not propose a change in the use of land or allowable use of property. The amendment also does not change the land use designation or zoning district of any land within the City or affect the allowable permitted or conditional uses or development standards in any land use designation or zoning district. Development as defined in section 30106 of the Coastal Act will continue to require a CDP and be subject to the development policies of the certified LCP.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Though no specific environmental review document or notice of exemption was adopted by the City, the 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. 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.

DEADLINE FOR COMMISSION ACTION

This proposed LCP amendment was received by the Commission on July 3, 2018 and was filed as complete on July 18, 2018. The amendment modifies only the LCP's IP and the 60-day deadline for Commission action is September 16, 2018. Thus, unless the Commission votes to extend the action deadline (it may be extended by up to one year), the Commission must take final action on this LCP amendment at the September 2018 Commission meeting.

ADDITIONAL INFORMATION AND SUBMITTAL OF COMMENTS

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its September 12, 2018 meeting in Fort Bragg. For additional information about the LCP amendment, please contact Robert Merrill at the North Coast District Office at (707) 826-8950. Please mail correspondence to the Commission at the letterhead address. Written comments on the proposed de minimis amendment determination should be submitted by September 7, 2018 to ensure they can be transmitted to the Commission meeting.

EXHIBITS

[Exhibit 1: Regional Location](#)

[Exhibit 2: Resolution of Transmittal of IP Amendment](#)

[Exhibit 3: Ordinance of Adoption of IP Amendment](#)

[Exhibit 4: Excerpt from the Certified IP Showing Proposed Amendments](#)