

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



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Prepared November 22, 2019 (for December 13, 2019 Hearing)

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Katie Butler, Coastal Planner

**Subject: City of Grover Beach LCP Amendment Number LCP-3-GRB-19-0153-3-Part A
(Cannabis Updates)**

Proposed Amendment

The City of Grover Beach proposes to amend the Local Coastal Program (LCP) Implementation Plan (IP), or Development Code, to update existing Section 4.10.045 (Commercial Cannabis Activity and Uses) to: allow for extended hours of operation for cannabis retailers and/or microbusinesses subject to specific findings related to enhanced security measures; allow for extended hours for commercial delivery transport between licensees and customers for all commercial cannabis businesses; and add a definition of and requirements for “secured delivery” consistent with State law. 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 or more of the appointed members of the Commission request that it be processed as a regular 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.

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

The City adopted regulations in 2017 related to adult and medical commercial cannabis use, including location and performance standards such uses must meet, and the Commission

subsequently approved those regulations after finding that cannabis activities would not adversely impact coastal resources. This amendment slightly modifies the existing regulations, including to extend hours of operation for retailers if certain security-related measures are included on site, and to add a clarifying definition and standards for “secured delivery” consistent with State law. All other LCP and cannabis-specific standards are unchanged by the amendment and remain in effect, thereby ensuring continued protection of coastal resources. The proposed amendment clarifies standards in the LCP related to this type of use, and does not change the kind, location, intensity, or density of use of land, and therefore qualifies under the regulatory definition of a minor LCP amendment (14 CCR Section 13554(a)).

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. (*See* (Pub. Res. Code Section 21080.5; 14 CCR Section 15251(f).) The City has determined that the amendment is exempt from CEQA pursuant to 14 CCR Section 15061 based on the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment. The amendment would not expand the types of uses allowed, or result in an increase in potential development. Therefore, the City determined that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect 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 December 13, 2019 meeting in Calabasas. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Katie Butler at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed minor LCP amendment determination, please do so by 5:00 p.m. on December 6, 2019.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on November 8, 2019. It amends the IP only and the 60-working-day action deadline is February 10, 2020. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until February 10, 2020 to take a final action on this LCP amendment.

Exhibit:

Exhibit 1: Proposed Amendment Text

ORDINANCE NO. 19-05

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH,
CALIFORNIA AMENDING ARTICLE IX SECTION 4.10.045 SUBSECTION G TO
REVISE COMMERCIAL CANNABIS DEVELOPMENT STANDARDS**

WHEREAS, the City of Grover Beach is a General Law city organized pursuant to Article XI of the California Constitution; and

WHEREAS, pursuant to the authority granted the City by Article XI, Section 7 of the California Constitution, the City has the police power to adopt regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or public safety; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police power; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq. classifies marijuana as a Schedule 1 Drug and makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense, marijuana; and

WHEREAS, the Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation or possession of cannabis for medicinal purposes; and

WHEREAS, notwithstanding federal law, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996"), the intent of Proposition 215 being to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act" to clarify the scope of the Compassionate Use Act of 1996 ("CUA"); and

WHEREAS, the Medical Marijuana Program Act ("MMPA") promulgates rules wherein counties and cities can adopt and enforce rules and regulations consistent with its provisions; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768) affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider; and

WHEREAS, in 2015, California enacted three bills – Assembly Bill 243; Assembly Bill 266; and Senate Bill 643 – that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sales, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

WHEREAS, In November, 2016, Proposition 64 was enacted and entitled "The Adult Use of Marijuana Act" ("AUMA") (codified as amendments to California Health and Safety Code, Business and Professions Code, Revenue and Taxation Code and Food and Agricultural Code). The intent of Proposition 64 being to establish a comprehensive system to decriminalize, control and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana, as well as other marijuana related activities; and

WHEREAS, June 27, 2017, the State Legislature adopted the State Budget along with a number of trailer bills including Senate Bill 94 which enacted "The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA. Under this bill, these consolidated provisions make up the MAUCRSA and includes the regulations for both medical and nonmedical cannabis uses; and

WHEREAS, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 753 ("*Inland Empire*") that the objectives of the CUA and MMPA were modest and that those acts did not create a broad right to access medical marijuana, and *Inland Empire* goes on to provide that neither the CUA nor the MMPA "expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude" the distribution of medical marijuana. (Id. At p. 762.); and

WHEREAS, the Court of Appeal, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal.App.4th 975, that the reasoning of *Inland Empire* applies to the cultivation of medical marijuana as well as its distribution, as both are addressed in the CUA and the MMPA; and

WHEREAS, with limited exceptions, neither the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical Cannabis Regulation and Safety Act (MCRSA), the Adult Use of Marijuana Act (AUMA) or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities for distribution, cultivation, manufacturing or processing medical or non-medical marijuana within its jurisdiction, and

WHEREAS, notwithstanding the comprehensive nature of both the Adult Use of Marijuana Act and the Medicinal and Adult-Use Cannabis Regulation and Safety Act, both Acts under state law protect the ability of local entities to maintain reasonable control over medical and non-medical marijuana activities; and

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of commercial medical and adult use marijuana-related businesses and personal use which are intended to operate in conjunction with the City of Grover Beach Development Code's land use regulation and which are intended to address the negative impacts and nuisance impacts of marijuana-related businesses and use; and

WHEREAS, commercial Medical and Adult Use marijuana-related businesses and personal use will be subject to the zoning and land use regulations as set forth in Article IX, Development Code, of the City of Grover Beach Municipal Code; and

WHEREAS, mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this ordinance shall be construed, in anyway, to expand the rights of anyone to use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, testing or consumption of marijuana that is otherwise illegal. It is further the intent of the City Council of the City of Grover Beach to maintain local control over these matters to the fullest extent permitted by law; and

WHEREAS, the Planning Commission held a public hearing on June 26, 2019 and recommended the City Council approve the Development Code amendment; and

WHEREAS, the City Council held a public hearing on July 1, 2019 and conducted an introduction and first reading to approve the amendments to the commercial cannabis land use and regulatory ordinances.

WHEREAS, the City Council held a public hearing on July 15, 2019 and conducted a second reading to approve the amendments to the commercial cannabis land use and regulatory ordinances.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF GROVER BEACH AS FOLLOWS:

PART 1. Findings of Exemption for the purposes of the California Environmental Quality Act:

The proposed amendment is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 based on the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed amendment would not expand the types of uses allowed, or result in an increase in potential development.

PART 2. Article IX Development Code, Chapter 4 Standards for Specific Development and Land Use, Section 4.10.045 Commercial Cannabis Activity and Use, Subsection G Development Standards is hereby amended as follows:

G. Development standards. Commercial Cannabis Uses shall comply with the following standards:

1. All Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only, may be open to the public between the hours of 9:00 a.m. and 7:00 p.m. ~~and make and receive deliveries between the hours of 8:00 a.m. and 9:00 p.m.~~ Extended hours will be approved from 7:00 a.m. to 9:00 p.m. subject to a finding that enhanced security is agreed to and provided by participating in the City's operated security system with cameras and video capability to view the street frontages of the business to the boundaries of the premises or lot where the business is permitted. All other non-retailer and Microbusinesses with non-retailer uses may operate at any time. ~~but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.~~ Commercial transport between licensees and deliveries to customers for all commercial cannabis businesses shall be between the hours of 7:00 a.m. and 9:00 p.m.

2. Cultivation and nursery uses shall prepare a Water Recycling Management Plan that demonstrates that irrigation water is recycled to the maximum extent feasible using best management practices. A separate water meter shall be installed for irrigation uses.
3. All cultivation and nursery uses shall be within an enclosed building. Cultivation and nursery uses are prohibited outdoors.
4. Cultivation and nursery uses may use mixed-light buildings when issued a local license consistent with State licensing that allows for mixed-light buildings when no light is visible through the roof and windows of grow areas from dusk to dawn.
5. ~~All delivery areas and loading/unloading areas shall be conducted within a secured area.~~ Secured Delivery. All commercial cannabis facilities shall provide a secured shipping and receiving area for deliveries of all cannabis, cannabis concentrate, and cannabis products as defined in GBMC Article III, Chapter 18, Section 4000.20. A secured shipping and receiving area shall comply with either of the following:
 - a. Internal – Within a fully enclosed structure either attached or within the commercial cannabis building that provides sufficient area to park and unload the delivery vehicle(s) located at the side or rear of the building, if feasible. Access shall be through a roll up or similar garage door with removable bollards. The delivery area shall be monitored 24 hours a day by video surveillance, electronic alarm monitoring, and shall not have any windows leading to the outside. Any skylights shall either be removed or have security bars added to prevent entry. The delivery area shall only be accessible to the shipping and receiving area and not directly into the operating, manufacturing, or retail portions of the commercial cannabis business.
 - b. External – Within a fenced or walled area that is not visible from the street and adjacent properties located at the side or rear of the building as approved by the Police Chief. The fence or wall shall be a minimum of six (6) feet in height that is structurally sound and secure to prevent access and fully encloses the delivery area. The fence shall visually screen the delivery area so delivery activities are not visible from the street and adjacent properties. The fence design shall be consistent with the Industrial Design Guidelines and constructed of durable, solid materials. The fence shall include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. If a roof or structure is required to screen the shipping and receiving area from adjacent properties, it shall be made of a solid material that will provide full visual screening of the delivery area. This delivery area shall be monitored 24 hours a day by video surveillance and only be accessible to the shipping and receiving area and not directly into the operating, manufacturing, or retail portions of the commercial cannabis business.
6. Odor control devices and techniques shall be incorporated to ensure that marijuana odors are not detectable from the property boundary and public right-of-way. In multi-tenant buildings marijuana odors shall not be detectable from the building exterior, or from exterior and/or interior common areas such as walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. Odor control systems shall include, but are not limited to, ventilation and exhaust systems that provide sufficient odor absorbing to meet the above requirements.
7. An Operations and Security Plan shall be prepared as required by Municipal Code Article III Chapter 18.

- 8. Design standards in Section 2.40.050 and any other Council adopted design guidelines.
- 9. All applicable regulatory requirements of Municipal Code Article III Chapter 18.

PART 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

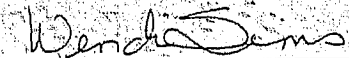
PART 4. All ordinances and parts of ordinances in conflict with those sections amended or added herein are hereby repealed.

PART 5. Effective Date. This Ordinance shall not become effective and in full force and effect until 12:01 a.m. on the thirty first day after its final passage for areas not located within the Coastal Zone. This Ordinance shall not become effective and in full force and effect for areas located within the Coastal Zone until final certification by the California Coastal Commission. However, within fifteen (15) days after adoption by the City Council, the Ordinance shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

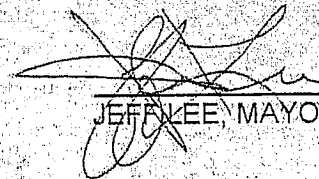
INTRODUCED at a regular meeting of the City Council held on July 1, 2019 and **PASSED, APPROVED, and ADOPTED** by the City Council on July 15, 2019, on the following roll call vote, to wit:

AYES: Council Members - Bright, Nicolls, Mayor Pro Tem Shah, and Mayor Lee
 NOES: Council Members - None
 ABSENT: Council Members - None
 ABSTAIN: Council Members - None
 RECUSED: Council Members - Lance

Attest:

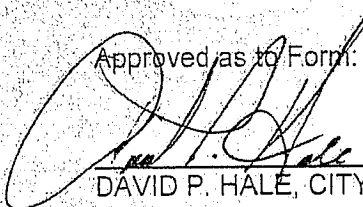


 WENDI SIMS, CITY CLERK



 JEFF LEE, MAYOR

Approved as to Form:



 DAVID P. HALE, CITY ATTORNEY