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# W20b

**Prepared February 21, 2020 for March 11, 2020 Hearing**

**To:** Commissioners and Interested Persons

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

**Subject: City of Pismo Beach LCP Amendment Number LCP-3-PSB-19-0152-2  
(Personal Services)**

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## SUMMARY OF STAFF RECOMMENDATION

The City of Pismo Beach is proposing to amend its Local Coastal Program (LCP) to add definitions and regulations for “personal service” land uses (including massage, check-cashing, gold and silver exchange, pawn shop, smoke shop, resale, and tattoo establishments). The proposed changes to the LCP Implementation Plan (IP) include distinct definitions for each type of use; additions of these uses as either permitted or conditionally permitted uses in the Hotel-Motel and Visitor-Serving (R-4), Resort-Residential (R-R), Retail Commercial (C-1), and General Commercial (C-2) zoning districts; and a new 1,000-foot minimum distance limitation between any like establishments (of these uses). The amendment also includes a clarification to the existing “adult businesses” definition in the IP to remove massage services (since this is now proposed as a separate use). To date, the City has allowed these types of personal service uses as retail and service businesses in areas where such uses are allowed, and now desires to clarify and provide specificity in the LCP for their regulation.

These uses are types of commercial/retail businesses or service establishments, similar to what is already allowed in the respective zoning districts, and adding these types of establishments as allowable land uses within these districts is consistent with the LUP provisions for the corresponding land use designations as well as the planning areas where they are located. The large majority of the four zoning districts where these uses will be allowed are located in the City’s Downtown Commercial Core, which is envisioned by the LUP to be the City’s primary commercial area for residents and visitors. Expanding the types of commercial/retail uses that are allowed in these commercial zones is consistent with the LUP’s planning framework for these areas.

In addition, the City desires to have greater control over where and how these types of uses could be located within these zoning districts. As such, the amendment proposes a 1,000-foot minimum distance between like uses to limit concentrations of these businesses. Similarly, the proposed addition of primary massage establishments as a conditional use means that such businesses must undergo an additional level of review by the Planning Commission to ensure they will have “no significant negative impact on the vicinity, views, aesthetics or health, safety and welfare of the community.” Finally, although not a part of this LCP amendment, the City has indicated that it will develop additional performance standards (such as related to hours of operation, professional certification requirements, security measures, etc.) for these uses that will be added to Municipal Code Title 5 (Business Taxes, Licenses, and Regulations), which is not a part of the LCP.

In sum, the proposed amendment clarifies how personal service uses are regulated in the City, including by providing distinct definitions for each specific use and identifying the zoning districts in which these uses are allowed. The amendment is not necessarily expected to result in a greater or lesser number of personal service uses since the City already allows and regulates these uses as commercial, retail, and service businesses, but instead is expected to more precisely define and provide for greater clarity for this class of uses to allow the City to regulate them more effectively. These uses are commercial/retail businesses or service establishments, which are consistent with the LUP’s framework and requirements for the areas in which they are proposed.

Overall, the proposed IP amendment provides refinement and clarity to the LCP’s approach to personal service uses, and should serve to effectively address potential issues better than the existing IP provisions. Staff recommends that the Commission find the proposed amendment consistent with and adequate to carry out the policies of the LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 4 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on February 7, 2020. The proposed amendment affects the LCP’s IP, and the 60-working-day action deadline is May 5, 2020. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until May 5, 2020 to take a final action on this LCP amendment.

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### **EXHIBITS**

Exhibit 1: Proposed IP Amendment (clean version)

Exhibit 2: Proposed IP Amendment (shown in strikethrough and underline)

## I. Motion and Resolution

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment as submitted. The Commission needs to make one motion in order to act on this recommendation.

### **Certify the IP Amendment As Submitted**

Staff recommends a **NO** vote on the motion below. Following this staff recommendation will result in certification of the IP 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.

**Motion:** I move that the Commission reject Implementation Plan Amendment Number LCP-3-PSB-19-0152-2 as submitted by the City of Pismo Beach, and I recommend a **no** vote.

**Resolution:** The Commission hereby certifies Implementation Plan Amendment Number LCP-3-PSB-19-0152-2 as submitted by the City of Pismo Beach and adopts the findings set forth below on the grounds that the amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment complies with 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 plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Implementation Plan Amendment may have on the environment.

## II. Findings and Declarations

### **A. Background**

The City's LCP does not currently define certain types of personal service uses<sup>1</sup> or include specific provisions for where they can be located. To date, the City has treated these uses as general commercial, retail, or service businesses and allowed them in areas where the zoning allows such uses. The City indicates that when the LCP was certified in 1983, many of these types of businesses did not exist in the City, and the LCP therefore did not define or include specific regulations for them. That has changed over time, in particular as the economy shifts and businesses come and go, and a number of these types of uses now currently exist in the City.

In 2017, the City Council directed staff to research these types of uses, including in response to recent case law that protected tattooing as a first amendment right and

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<sup>1</sup> Specifically, tattoo, massage, pawn, resale, smoke shop, check cashing, bail bond, gold and silver exchange, tire sales and repair, and blood/plasma sale establishments. The City subsequently determined that tire sales/repair, blood plasma donation centers, and bail bonds businesses did not need to be included as part of the amendment because they do not warrant special regulation.

limited cities' abilities to deny or over-regulate the practice. In addition, the Council desired to have greater control over where these types of uses could be located, particularly in the Downtown Core. The City adopted an urgency ordinance in December 2017 prohibiting the approval, expansion, intensification, or relocation of any new or existing specified personal service businesses, and extended it again in January 2018 and November 2018 to allow for time to study the potential impacts of these uses and develop new, permanent regulations for them. During that time, the City researched the history and impacts of each of the proposed uses in the City, the approaches other jurisdictions have taken to manage said uses, and applicable case law, and then drafted the proposed amendment.

## **B. Description of Proposed LCP Amendment**

The City of Pismo Beach is proposing to amend its Local Coastal Program (LCP) to add definitions and regulations for “personal service” uses (including both accessory and primary massage,<sup>2</sup> check-cashing, gold and silver exchange, pawn shop, smoke shop, resale, and tattoo establishments). The proposed changes to the LCP Implementation Plan (IP) include distinct definitions for each new use; additions of these new uses as either permitted or conditionally permitted uses to the list of allowable uses in the Hotel-Motel and Visitor-Serving (R-4), Resort-Residential (R-R), Retail Commercial (C-1), and General Commercial (C-2) zoning districts; and a new 1,000-foot minimum distance limitation between any like establishments (of these uses).

Specifically, in the C-1, C-2, and R-R districts, check-cashing, gold and silver exchange, massage (accessory), pawn shop, resale, smoke shop, and tattoo establishments are proposed to be added as permitted uses,<sup>3</sup> and massage establishment (primary) is proposed to be added as a conditionally permitted use, requiring a conditional use permit.<sup>4</sup> In the R-4 district, massage (accessory) and tattoo establishments are proposed to be added as permitted uses. The proposed 1,000-foot minimum distance would apply to check-cashing, gold and silver exchange, massage (primary), pawn shop, resale, smoke shop, and tattoo establishments, and would not apply to accessory massage establishments. The proposed requirements specify that 1,000 feet is the

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<sup>2</sup> A “massage establishment – primary” is considered to occupy more than 25% of the floor area of the establishment, while a “massage establishment – accessory” is considered to be located with some other primary use (such as a doctor’s office or hotel) and not occupying more than 25% of the floor area of that primary use.

<sup>3</sup> IP Section 17.006.0825 defines “permitted use” as an allowable use inherently compatible with other uses in that district, not requiring a conditional use permit. In the coastal zone, the LCP requires applications for development to obtain a coastal development permit (regardless of whether it is a permitted or conditional use in the underlying zoning district), unless otherwise excluded.

<sup>4</sup> IP Section 17.121.020 states that “Conditional use permits provide for planning commission review of uses determined compatible with particular zones on a conditional basis. Such uses must be found to have no significant negative impact on the vicinity, views, aesthetics or health, safety and welfare of the community. The planning commission may impose such conditions as it deems necessary to secure the purposes of this Title and may require tangible guarantees or evidence that such conditions are being, or will be complied with. Conditional use permits are subject to the public hearing and notice procedures established by Chapter 17.121...”

minimum linear distance between the closest points along the boundaries of the parcel upon which the existing use is located and the parcel upon which the additional use is proposed.

The amendment also includes a clarification to the existing “adult businesses” definition in the IP to remove massage services (since this is now proposed as a separate use).

Please see **Exhibit 1** for the proposed IP amendment and **Exhibit 2** for the proposed changes shown in strikethrough and underline form.

## **C. Consistency Analysis**

### **Standard of Review**

The proposed amendment affects only the IP component of the City of Pismo Beach LCP. The standard of review for IP amendments is that they must conform with and be adequate to carry out the policies of the certified LUP.

### **IP Amendment Consistency Analysis**

The Pismo Beach LUP includes an extensive land use framework for the City, including overarching objectives for each land use type and a concept and suite of policies for each of the 17 neighborhood planning areas. The four zoning districts to which this amendment proposes to add these new uses are located in the LUP planning areas listed below. Applicable LUP provisions include:

#### **Land Use Principle P-15 Visitor/Resident Balance**

The California coast is an extremely desirable place to live, work and recreate that belongs to all the people. As such, congenial and cooperative use by both residents and visitors is recognized. Such use should capture the best attributes of the city and creatively determine the acceptable place, scale, intensity, rate and methods for development consistent with resource protection and public benefit.

#### **Land Use Policy LU-4 Resort Commercial Land Uses** (in relevant part)

The Resort Commercial land use shall allow various visitor services including motels, hotels and R.V. Parks. ... Specific policies for these uses are:

- a. All income levels. Resort commercial activities shall be promoted catering to visitors of all income levels...
- d. Non-visitor-serving uses

The Resort Commercial category is specifically intended to be set aside for visitor-serving uses. Residential and/or non-visitor-serving commercial uses may be permitted on lands designated within this category only if one of the following findings is made:

1. The size, shape or location of the parcel make it inappropriate for a visitor-serving use; or
2. The use is low-or moderate-income housing that is clearly subordinate and accessory to an on-site hotel or motel use and is established for, and limited to occupancy by, employees of the hotel, motel or other nearby visitor-serving establishments. Uses, which shall be specifically prohibited, include office space for general or medical businesses, and non-retail commercial services.

**Land Use Policy LU-5 Commercial Land Uses** (in relevant part)

The Commercial land use designations shall allow visitor-serving, neighborhood and regional commercial uses. ...

**Land Use Policy LU-C-1 – Planning Area C (North Spyglass)**

The North Spyglass Planning Area is oriented to visitor-serving hotel uses with related public and private beach access and open space. The area is designated Resort Commercial and Open Space.

**Land Use Background – Planning Area D (Spyglass)**

The Spyglass Planning Area is a fully developed residential area with multiple housing types, a small commercial center and the Spyglass Public Park. The area serves as a gateway to the City as both Highway 101 on and off ramps are located in this area.

**Land Use Policy LU-D-1 – Planning Area D (Spyglass)**

The Spyglass Planning area is a residential neighborhood (Medium and High Density) with access to two parks and neighborhood shopping. The emphasis is on conserving the existing housing stock and assuring that future changes are compatible with the existing neighborhood.

**Land Use Policy LU-H-1 – Planning Area H (Shell Beach)**

Shell Beach Road is bordered by a narrow commercial strip backed by a narrow band of High Density Residential. ...

**Land Use Policy LU-I1 – Planning Area I (Dinosaur Caves)**

The Dinosaur Caves Planning Area is oriented to open space, parks and visitor serving uses with related public lateral bluff-top access and open space. ...

**Land Use Policy LU-J1 – Planning Area J (Motel District)**

The Motel District shall be designated for Resort Commercial, Medium Density Residential and Open Space. The area shall serve as a key focus for Pismo Beach's visitor-serving industry with special consideration given to ocean views and bluff access. Retention or upgrading of the existing motel uses is a major emphasis of the plan.

**Land Use Background – Planning Area K (Downtown Core)**

The Downtown Core area encompasses downtown Pismo Beach, an important visitor-serving center of the city. Many motel and hotel uses are located here, primarily along Price, Pomeroy and Dolliver Streets and the oceanfront. The majority of commercial uses are between Dolliver Street and the ocean and Main and Stimson Streets. ....

**Land Use Principle P-17 – Planning Area K (Downtown Core) Downtown Focus for Residents and Visitors**

Downtown Pismo Beach shall be a city focal point with a blend of cultural, commercial, professional, residential and recreational uses catering to both visitors and residents of all ages. Tourism and visitor services shall be emphasized, carefully and conscientiously blending shopping, recreational and cultural activities for the visitor, with housing, retail and professional services needed by the residents of the community. The downtown area of Pismo Beach serves residents year-round, and in this context the downtown must remain inviting and pleasant to the citizens of the community. New development and revitalization of downtown should enhance the quality of life for the residents as well as better serve the needs of visitors.

**Land Use Policy LU-K-1 – Planning Area K (Downtown Core)**

**Land Use Concept**

The downtown area includes a Central Commercial District, Mixed Residential District, Mixed Use District, and Open Space categories as shown in Figure LU-15.

**Land Use Policy LU-K-3.2 – Planning Area K (Downtown Core)**

**Central Commercial District**

The primary land use focus for the Central Commercial District is commercial, recreational and cultural. Commercial uses shall be oriented towards visitors (i.e. gift shops, clothing stores, restaurants). ... A pedestrian orientation will be promoted for all development in this district. The pier and boardwalk provide the focus for pedestrian activities in this very "walk-able" downtown commercial area.

...

**Land Use Policy LU-K-3.3 – Planning Area K (Downtown Core)**

**Mixed Use District**

The Mixed Use or MU District will provide for a wide variety of land uses including visitor lodging, commercial retail, restaurants, service uses, offices, and residential uses. The more intensive commercial uses and visitor-serving uses shall be encouraged to locate along the major thoroughfares. Mixed-use projects are encouraged throughout the district.

**Land Use Policy LU-L-1 – Planning Area L (Pismo Creek)**

The Pismo Creek area shall be designated Resort Commercial, Mobile Home Park and Open Space with land uses oriented to visitor-serving activities.

**Land Use Policy LU-M-1 – Planning Area M (Pismo Marsh)**

The Pismo Marsh area shall be designated for regional commercial uses (Commercial), moderate cost highway visitor-serving uses (Resort Commercial), a Mobile Home Park, Industrial and Open Space with an emphasis on protection of the marsh habitat. ...

As described above, the LCP does not currently define or include specific locational or other provisions for distinct types of personal service uses, and the City has, to date, treated them as commercial, retail, or service businesses and allowed them in areas where such uses are allowed.

The proposed amendment would identify massage, tattoo, check-cashing, gold and silver exchange, pawn shop, smoke shop, and resale establishments as distinct uses and add them as either permitted or conditional uses in four of the City's zoning districts. These uses are types of commercial/retail businesses or service establishments, similar to what is already allowed in the respective zoning districts, and adding them to these districts is consistent with LUP provisions for the corresponding land use designations as well as the planning areas where they are located. Specifically, the C-1 and C-2 zoning districts are located along highway frontages in the LUP's Spyglass, Shell Beach, and Pismo Marsh Planning Areas and in a large area of the Downtown Commercial Core. Adding these uses to these districts is consistent with LUP policies and objectives for these areas. For example, both the Spyglass and Shell Beach Planning Areas identify and acknowledge the existence of commercial areas amidst the predominantly residential nature of these areas. And the Downtown Core is clearly envisioned by the LUP to be the City's primary commercial area for residents and visitors. Expanding the types of retail and service uses that are allowed in these commercial zones, but with certain caveats related to proximity so as not to oversaturate the area with the particular use, is consistent with the LUP planning framework for these areas. Similarly, the LUP anticipates and encourages a mix of visitor-serving and commercial-type uses in the areas that contain the R-R and R-4 districts, in particular in the Downtown Core where the largest portion of the R-R and R-4-zoned land exists.

As described above, the City desires to have greater control over where and how these types of uses could be located within these zoning districts. The proposed minimum distance between like uses is intended to limit concentrations of these businesses. Similarly, the proposed addition of primary massage establishments as a conditional use means that such businesses must undergo an additional level of review by the Planning Commission to ensure they will have "no significant negative impact on the vicinity, views, aesthetics or health, safety and welfare of the community" (as required by IP Section 17.121.020). Finally, although not a part of this LCP amendment, the City has indicated that it will develop additional performance standards (such as related to hours of operation, professional certification requirements, security measures, etc.) for these uses that will be added to Municipal Code Title 5 (Business Taxes, Licenses, and Regulations), which is not a part of the LCP.

In sum, the proposed amendment clarifies how personal service uses are regulated in the City, including to provide distinct definitions for specific types of these uses and to identify zoning districts in which they are allowed. The amendment is not necessarily expected to result in a greater or lesser number of personal service uses since the City was already allowing and regulating them as commercial, retail, and service uses, but instead is expected to provide for greater clarity and guidelines for this class of uses. These uses are commercial/retail businesses or service establishments in nature and are consistent with the LUP framework and requirements for the areas in which they are proposed. The proposed minimum distance between the uses and the specific inclusion of primary massage establishments as a conditional use ensures that potential community impacts are appropriately addressed.

Overall, the proposed IP amendment provides refinement and clarity to the LCP's approach to personal service uses, and should serve to effectively address potential issues better than the existing IP provisions. For these reasons, the proposed IP amendment is consistent with and adequate to carry out the certified LUP.

#### **D. 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. Local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The City of Pismo Beach found that, under CEQA Guideline Section 15061(b)(3), the proposed LCP amendment is not subject to CEQA because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The City determined that no possibility exists that the amendment may have a significant effect on the environment. This report has discussed the relevant coastal resource issues with the proposal. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).