

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# W19a

**Prepared April 24, 2020 for May 13, 2020 Hearing**

**To:** Commissioners and Interested Persons

**From:** Susan Craig, Central Coast District Manager  
Colin Bowser, Coastal Planner

**Subject: De Minimis Amendment Determination for City of Santa Cruz LCP  
Amendment Number LCP-3-STC-20-0016-1-Part B (Downtown Plan)**

## **City of Santa Cruz's Proposed Amendment**

The City of Santa Cruz is proposing to modify its Local Coastal Program (LCP) by modifying its Downtown Plan, which is a component of the LCP's Implementation Plan (IP). The proposed modifications to the Downtown Plan would remove the requirement for defined "personal services businesses" to receive an administrative use permit (i.e., a separate City-required authorization independent of any needed coastal development permit), allow the sale of alcohol for off-site consumption under certain circumstances, and rescind the ban on tattoo parlors in the downtown commercial core area, portions of which are located in the coastal zone. These changes are relatively minor, and generally continue the Downtown Plan's allowance for a broad mix of uses to operate in the City's important downtown core. See Exhibit A for the text of proposed the Downtown Plan amendment.

## **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 Chapter 3 policies of the Coastal Act;
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 May 23, 2020).

**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 City of Santa Cruz originally produced its Downtown Plan in 1991 to coordinate the rebuilding of its badly damaged historic downtown after the Loma Prieta earthquake of 1989. Since then, the Downtown Plan has been amended several times but continues to serve as the blueprint for development within the commercial core of downtown Santa Cruz.

In 2000, the Downtown Plan was amended to prohibit several types of businesses and required others, such as personal service businesses (for example, barber shops and hair salons), to receive administrative use permits. Since then, the City found that requiring administrative use permits acted as a barrier to certain new businesses opening downtown, limiting their viability as successful businesses. Thus, the amendment does away with the administrative use permit requirement for personal service businesses with the goal of eliminating a barrier to their operation. Since doing so does not affect coastal development permit requirements for new development in the coastal zone (i.e., the administrative use permit is a separate City authorization independent of any CDP requirement), the proposed amendment does not raise any Coastal Act or coastal resource concerns.

In addition, the proposed amendment would allow tattoo parlors as a type of personal service business. This is to ensure compliance with the ruling by the Ninth U.S. Circuit Court of Appeals in *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (9th Cir. 2010) where the Court found tattoos to be a form of protected speech and thus a business type that could not be restricted as was previously done by the City.

Personal service businesses would need to meet specific requirements, including that the business have a retail component at the front of the store with the personal

service component located behind the retail portion of the business in the rear of the store. The business would have to maintain a storefront appearance along the street that is consistent with other downtown retail storefronts, as well as being located within the building such that the personal service portion of a business is separated from the sidewalk by at least 40 feet of retail space so as to ensure an active street-level retail scene. These changes to how personal service businesses are regulated, including tattoo parlors, should have no impact on coastal resources in the downtown area and the amendment will ensure that the downtown area remains active for mixed uses.

Finally, the proposed revisions to the Downtown Plan would also allow stores to sell alcoholic beverages for off-site consumption if: a) the alcoholic beverages comprised less than 15% of the store's total shelf space and selling alcoholic beverages were incidental to the store's primary use; b) alcohol is sold only between 7:00 a.m. and 12:00 a.m.; c) the store complies with measures recommended by the Police Department to prevent theft and the selling of alcohol to minors, and; (d) the store limits the sale of single-serving containers of alcoholic beverages. Similar to the discussion above regarding tattoo parlors, allowing the incidental sale of to-go alcoholic beverages downtown should not have any adverse impact to coastal resources.

The City believes the three changes to the City's Downtown Plan of allowing tattoo parlors, removing barriers to personal service businesses, and allowing some alcohol sales for offsite consumption would bring the mix of downtown businesses more in line with the modern tastes of residents and visitors. These changes would maintain the access and appeal of existing visitor-serving business in the small portion of the downtown area that lies within the coastal zone and, importantly, the amendment does not implicate coastal resources. Thus, the proposed amendment will not adversely affect coastal resources, and it is consistent with the policies of Chapter 3 of the Coastal Act.

- 2. Provision of public notice:** The City provided public notice, including via newspaper notices on December 1, 2019 and January 12, 2020, in advance of the Planning Commission hearing (held on December 19, 2019) and the City Council hearing (held on January 28, 2020) where the proposed amendment was considered. The proposed text was made available at the City Clerk's office and on the City's website for public inspection, all in advance of the City's hearings. The amendment submittal was subsequently received by the Commission on February 27, 2020 (and filed as complete on March 8, 2020). Therefore, the 21-day noticing requirement has been satisfied.
- 3. No change in use of land or allowable use of property:** No change in land use is proposed by this amendment since the amendment addresses permit requirements

and personal service business standards, including further refining the specific types of personal service businesses allowed downtown (the umbrella term for uses that are already allowed in this area).

### **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. The City exempted the proposed amendment from environmental review under 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.

### **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 May 13, 2020 meeting to be held online as a virtual meeting and teleconference. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Colin Bowser at the Central Coast District Office in Santa Cruz by email (Colin.Bowser@coastal.ca.gov). If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by 5:00 p.m. on May 8, 2020.

### **Procedural Note - LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on March 9, 2020. It amends the IP only and the 60-working-day action deadline for the Commission to take action on the amendment would normally be June 3, 2020. However, on April 16, 2020, California's Governor issued Executive Order N-52-20 that suspends this deadline for 60 days (i.e., until August 26, 2020). Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until August 26, 2020 to take a final action on this LCP amendment.

### Exhibit

Exhibit 1: Proposed Downtown Plan revisions