

CALIFORNIA COASTAL COMMISSION

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Date: October 28, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **JOHN AINSWORTH, EXECUTIVE DIRECTOR**

Subject: **CITY OF SAN DIEGO DE MINIMIS LOCAL COASTAL PROGRAM AMENDMENT
LCP-6-SAN-20-0076-4 (Cannabis Outlets and Production Facilities) FOR
COMMISSION REVIEW AT ITS MEETING OF NOVEMBER 19, 2021**

The Coastal Act was amended January 1, 1995 to provide for a more streamlined method to review amendments to local coastal programs. Section 30514(d) allows the Executive Director to make a determination that a proposed LCP amendment is de minimis in nature. The Executive Director must determine that the proposed amendment: 1) has no impact, either individually or cumulatively, on coastal resources; 2) is consistent with the policies of Chapter 3; and 3) does not propose any change in land use or water use or any change in the allowable use of property. Section 30514(d) requires the local government to notice the proposed de minimis LCP amendment 21 days prior to submitting it to the Executive Director either through: 1) publication in a newspaper of general circulation; 2) posting onsite and offsite the area affected by the amendment; or 3) direct mailing to owners of contiguous property. If the Executive Director makes the determination that the proposed amendment qualifies as a “de minimis” amendment and finds the public notice measures have been satisfied, such determination is then 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 (November 19, 2021).

PROPOSED AMENDMENT

The City of San Diego’s LCP amendment request was filed on November 19, 2020. At its February 2021 hearing, the Commission approved a one-year time extension to February 18, 2022. As such, the last date for Commission action on this item is the February 2022 meeting.

The City has adopted code amendments related to the siting and processing of Cannabis Outlets (CO) and Cannabis Production Facilities (CPF), which are uses allowed under the city’s existing code. The proposed changes would apply to the City’s Land Development

Code, which serves as the Implementation Plan component of the City's LCP, and thus require Commission review.

The proposed ordinance includes language clarifying the separation requirements between CO and CPF and residential zones, and provides a process for amending current Conditional Use Permits for these uses. Specifically, the proposed ordinance clarifies that the required distance between CO and CPF to residential zones (1,000 feet from uses such as parks, schools, libraries, etc., and 100 feet from residential lots) is measured horizontally, in a straight line between the closest points of the property lines, and without taking into account any barriers. While the ordinance would clarify how separation distances are measured, no actual changes to the existing distance requirements are proposed. In addition, the proposed ordinance would change the process for amending the time frame of a Conditional Use Permit for existing permitted CO and CPF from an extension of time to a Conditional Use Permit amendment. The amendment process would continue to allow the expiration date to be extended up to five years (as is currently allowed under the code), and the City's local action on the amendment would be appealable to the Planning Commission. In sum, both proposed changes are procedural in nature and no substantive changes to the development standards for the uses are proposed.

The proposed amendment is presented in attached Ordinance Number O-21221. The amendment only affects the certified Implementation Plan and was properly noticed.

If you have any questions or need additional information regarding this proposed amendment, please contact Kaitlin Carney at SanDiegoCoast@coastal.ca.gov. Any objections to the "minor" amendment determination must be received within ten working days of the date of this notice.

DISCUSSION

In June 2014, the Commission approved LCP Amendment No. LCP-6-SAN-14-0605-1 creating a new separately regulated commercial use in the City of San Diego— medical marijuana consumer cooperatives. Following the approval of Proposition 64 and the legalization of recreational marijuana use, the City adopted code amendments to modify the certified LCP so as to convert the medical marijuana consumer cooperatives into a separately regulated commercial service, marijuana outlets, in a limited number of industrial and commercial zones that avoid visitor-serving areas. The Commission approved LCP-6-SAN-17-0050-2 (Retail Sales/Marijuana Outlets) in October 2017. In February 2018, the Commission approved LCP-6-SAN-17-0081-5 (Marijuana Testing Facilities and Production) permitting marijuana testing and production facilities in the city's light and heavy industrial zones. Marijuana Outlets and Marijuana Production Facilities are now called Cannabis Outlets (CO) and Cannabis Production Facilities (CPF), respectively.

The City's proposed amendment includes two components. First, the existing code requires a 100-foot separation between CO and CPF and residential zones. The proposed ordinance clarifies that the distance between CO and CPF to residential zones is measured horizontally, in a straight line between the closest points of the property lines, and without taking into account any barriers such as topography or structures. This

proposed change would not lessen the existing separation requirements for sensitive land uses but rather is intended to reduce ambiguity in applying the measurement requirements, specifically ambiguities regarding the consideration of barriers (e.g., topography, structures) in this measurement. In addition, the proposed ordinance provides a process for amending current Conditional Use Permits for CO and CPF. The current code allows CO and CPF that were granted a Conditional Use Permit an extension of time of up to five years, not subject to the separation requirements for sensitive land uses or zone changes. The proposed ordinance would change the process from an extension of time to a Conditional Use Permit amendment, allow medical marijuana consumer cooperatives to amend their permits and convert to a CO, and allow expansions within the same premises. This amendment process would occur via the City's Process Two decisions, by which City staff will review amendment applications and staff's decision is appealable to the Planning Commission. Thus, the public would maintain the opportunity to participate and/or appeal any decisions related to CO and CPF.

In past Commission actions regarding LCP amendments addressing cannabis distribution, the Commission has consistently found that the subject of cannabis and its availability to the public is not a Coastal Act issue. The approved Ordinance Number O-21221 amends the City's procedural requirements for CO and CPF and will not change any coastal zone property/land uses or have any potential to impact coastal resources, either individually or cumulatively. No changes to the regulations or standards for CO and CPF are proposed, and the public will continue to be able to participate on decisions regarding these types of projects at the local level. Therefore, the proposed amendment is consistent with Chapter 3 of the Coastal Act.

DETERMINATION

The Executive Director determines that the City of San Diego LCP amendment is de minimis. Based on the information submitted by the City, the proposed LCP amendment will have no impact, either individually or cumulatively, on coastal resources. It is consistent with the policies of Chapter 3 of the Coastal Act. The amendment does not propose any change in land use or any change in the allowable use of property. The City has properly noticed the proposed amendment. As such, the amendment is de minimis pursuant to Section 30514(d).

CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP. The City found that implementation of this LCPA would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified per CEQA Guidelines Section 15162. The City also determined that the changes would not be subject to CEQA as they would not result in any physical changes to the environment.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the de minimis LCP amendment, as submitted, would not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act.