

**CALIFORNIA COASTAL COMMISSION**

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# F17d

Date: November 24, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DIANA LILLY, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
KAITLIN CARNEY, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR  
AMENDMENT NO. LCP-6-ENC-21-0058-2 (Cannabis Ordinance) for  
Commission Meeting of December 17, 2021)**

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## SYNOPSIS

On September 14, 2021, the City of Encinitas Local Coastal Program (LCP) Amendment No. LCP-6-ENC-21-0058-2 was filed in the San Diego District office. A one-year time extension was granted on October 13, 2021. As such, the last date for Commission action on this item is December 10, 2022.

### SUMMARY OF AMENDMENT REQUEST

The City is proposing to amend its certified LCP Implementation Plan to allow cannabis uses in certain zones of the City and create regulations and requirements for their operation consistent with a voter initiative recently passed in the City.

Encinitas voters passed Measure H on November 3, 2020 in the regular municipal election. Measure H was a citizen's initiative regarding cannabis that qualified for the ballot through the California elections code process. As required by law, the measure was placed on the ballot exactly as it was written and submitted to the City. The City is unable to make any changes to the measure as approved by the voters, and must implement the measure as written. Measure H created a new Encinitas Municipal Code Chapter 9.25. On August 11, 2021, the City Council adopted Ordinance No. 2021-04 to implement Measure H. Ordinance No. 2021-04 authorizes several cannabis-related uses in certain commercial, industrial, and agricultural zones throughout the City, as required by the measure.

Currently, the City's Municipal Code prohibits cannabis uses, although the code section prohibiting them is not part of the City's LCP. With the passage of Measure H, the City

must permit some cannabis uses. Within the LCP, the City is proposing to modify its Municipal Code Section 30 Zoning Matrix to allow cannabis uses that include retail, commercial cultivation, product manufacturing, kitchen, distribution, and industrial hemp as permitted uses within certain commercial, mixed-use, agriculture, business park, and industrial zones. The amendment also includes changes to several Specific Plans that serve as the City's LCP for their relevant areas. Business license requirements and development standards for cannabis uses, such as distancing requirements between retailers and sensitive uses (e.g., schools, parks, daycare centers), would be added as Chapter 9.25 the City's Municipal Code, but this Chapter is not proposed to be part of the City's LCP.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission approve the proposed IP amendment as submitted. The Commission may reject IP amendments only if the amendment would be inconsistent with the certified Land Use Plan or render the IP inadequate to carry out the LUP. The proposed amendment does not raise any issues relative to consistency with the certified land use plan, as there are no coastal resource impacts or public access issues anticipated to occur from approval. The new use will be permitted within zones that currently provide similar uses and development types (e.g., commercial, industrial), and will not be permitted in the City's visitor-serving or ecological resource/open space zones. All development proposed under this ordinance will be required to comply with the City's current LCP requirements, such as parking, height, setbacks, environmental resource protection, and signage. Thus, because no adverse impacts to coastal resources are anticipated and the proposed IP amendment is consistent with the certified LUP, staff recommends approval of the LCP amendment as submitted.

The appropriate resolutions and motions begin on Page 4. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 5.

## **ADDITIONAL INFORMATION**

Further information on the City of Encinitas LCP amendment No. LCP-6-ENC-21-0058-2 may be obtained from Kaitlin Carney, Coastal Planner, at (619) 767-2370 or [SanDiegoCoast@coastal.ca.gov](mailto:SanDiegoCoast@coastal.ca.gov).

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### EXHIBITS

[Exhibit 1 – Ordinance No. 2021-04](#)

[Exhibit 2 – Proposed Text Changes in Strikeout/Underline](#)

## **I. OVERVIEW**

### **A. LCP HISTORY**

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas' LCP (both LUP and implementing ordinances). The City accepted the suggested modifications; and, on May 15, 1995, began issuing CDPs for those areas of the City within the Coastal Zone. The Commission has certified many amendments to the City's LCP since 1995.

### **B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

### **C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **II. MOTION AND RESOLUTIONS**

### **MOTION:**

I move that the Commission reject the Implementation Program Amendment for the City of Encinitas as submitted.

### **STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a NO vote. Failure of this motion will result in certification of the Implementation Program 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.

### **RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the

requirements of 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 Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

### **III. FINDINGS FOR APPROVAL OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED**

#### **A. AMENDMENT DESCRIPTION**

The City of Encinitas proposes to modify the Implementation Plan (IP) component of its Local Coastal Program (LCP), to allow limited cannabis uses within certain zones of the City in compliance with a local voter initiative. The portions of the IP proposed to be amended include: Title 30 (Zoning), Downtown Encinitas Specific Plan, North 101 Corridor Specific Plan, Encinitas Ranch Specific Plan, and the Cardiff-by-the-Sea Specific Plan.

In 2020 Measure H was placed on the ballot through a petition by Encinitas voters and gave residents the opportunity to vote on a change to local regulations to allow certain cannabis-related uses and activities. Measure H passed on November 3, 2020, effectively allowing cannabis retail sales, cultivation, manufacturing, kitchens, distribution, and personal use cultivation, subject to certain regulations and restrictions. As required by law, the measure was placed on the ballot exactly as it was written and submitted to the City. The City is unable to make any changes to the measure as approved by the voters, and must implement the measure as written.

Pursuant to the ballot measure, this LCP amendment would allow these cannabis-related uses in certain commercial, industrial, and agricultural zones throughout the City. Cannabis retailers would be permitted in the General Commercial (GC) zone, in the Commercial Mixed Use (D-CM-1 and D-CM-2) zones in the Downtown Encinitas Specific Plan; in the Commercial Mixed Use (N-CM-1, N-CM-2, and N-CM-3) zones in the North 101 Corridor Specific Plan; in the Commercial (ER-C) and Mixed-Use (ER-MU1 and ER-MU2) zones in the Encinitas Ranch Specific Plan; and the General Commercial (C-GC1 and C-GC-2) zones in the Cardiff-by-the-Sea Specific Plan. Manufacturing would be permitted in the Light Industrial (LI) and Business Park (BP) zones, and in the Agricultural (AG) zone of the Encinitas Ranch Specific Plan. Cultivation would be permitted in the Agricultural (AG) zone of the Encinitas Ranch Specific Plan. Kitchens would be permitted in the GC, LI, and BP zones. Distribution would be permitted in the LI and BP zones. Industrial hemp would be permitted in the AG of the Encinitas Ranch Specific Plan. Cannabis uses and activities would not be permitted in any of the city's visitor-serving zones or ecological resource/open space zone. ([Exhibit 2](#))

The ballot measure also created a new Municipal Code Chapter 9.25 Cannabis Activity, which is not proposed to be part of the City LCP. Chapter 9.25 provides a list of relevant definitions, outlines a process for approval via business license, and specifies several regulations to ensure that adverse impacts to adjacent uses are limited. For example, all cannabis businesses must register with the City and show compliance with all regulations prior to being issued a business license and beginning operation, including a background check and written permission from the property owner or management. Retailers must maintain a 1,000-ft. separation from sensitive uses, including schools, parks, and daycare centers. Cannabis cultivation must occur within a greenhouse or enclosed space.

Prior to the passage of Measure H, cannabis uses and activities were not permitted in the city. Therefore, Measure H also repealed Municipal Code Chapter 9.21 Marijuana and Marijuana-related Activities and Uses, which contains the City's previous cannabis regulations (which were also not part of the City's LCP). The only changes to the City's certified IP are the above-described changes to Chapter 30 Zoning and changes to the Specific Plans.

[Exhibit 1](#) contains the proposed IP amendment text and [Exhibit 2](#) shows the proposed amendment in strike-out/underline.

## **B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN**

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The certified LUP has a number of goals and policies relevant to the proposed amendment; the most applicable LUP standards are as follows:

### **Land Use Element**

**Section – Maintaining Balanced Land Uses in the City:** The residents of the City feel that a balance must be achieved not only among the various land uses, but between urban development and the natural environment. There are a number of areas of the City that are presently undeveloped or underdeveloped that can accommodate additional homes or businesses.

**Policy 1.13:** The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:

- Tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation

-Entertainment

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally-permitted uses specified in the Zoning Code for areas zones as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. [...]

**Policy 2.8:** Development shall not be permitted where it will result in significant degradation of ground, surface, or ocean water quality, or where it will result in significant increased risk of sewage overflows, spills, or similar accidents.

**Section – Compatibility Between Existing and Future Development:** Land use conflicts often arise when newer projects are insensitive to the use, character or scale of existing development. These conflicts over time can lead to both deterioration and blight of both the older and newer homes and businesses. There are a number of ways potential conflicts can be resolved through proper planning in the early stages of project design. In addition, code enforcement is an important tool in ensuring that property is maintained. [...]

**Goal 8:** Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas.

**1. Findings for Approval**

The City of Encinitas is bounded by the City of Solana Beach and San Elijo Lagoon on the south, the City of Carlsbad and Batiquitos Lagoon to the north, and extends up to approximately 6 miles inland of the coast adjacent to the County of San Diego. The City has approximately 6 miles of shoreline, which is accessed regionally by the north/south Interstate 5 corridor, and locally by Coast Highway 101. Major east–west connectors to the shoreline are Leucadia Boulevard, La Costa Avenue, Encinitas Boulevard, Santa Fe Drive, and Manchester Avenue.

In past Commission actions regarding LCP amendments addressing cannabis, the Commission has consistently held that the subject of cannabis and the public’s access to it is not a Coastal Act issue. Nevertheless, some cannabis operations have the potential to raise land use compatibility and coastal resource issues. For example, cultivation could result in impacts to visual resources, public access, or sensitive habitat through the construction of significant fencing or nighttime lighting for security. Similarly, locating processing facilities and/or retail operations on agricultural lands could result in the conversion of agricultural lands to non-agricultural uses. As with cultivation, the manufacturing, testing, distribution, and retail of cannabis may also pose coastal resource protection issues. In some instances, the Commission has determined that cannabis-related uses are similar to other commercial, industrial, and agricultural uses and do not raise significant coastal resource issues; however, in other instances, the introduction of these cannabis-related activities have been found to have the potential to

raise coastal resource protection issues, including impacts to agricultural resources, water quality, environmentally sensitive habitats, and scenic resources.

In Encinitas, extensive cannabis cultivation is unlikely to occur due to land availability and suitability constraints within a fairly-developed urban setting. In addition, the production and retail forms of cannabis uses proposed in this LCP amendment (e.g., distribution, kitchen, retail) will occur within areas already designated for similar types of uses and are thus unlikely to create significant, new coastal resource impacts. For example, the proposed LCP amendment would allow cannabis product manufacturing within the Business Park (BP) and Light Industrial (LI) zones, and distribution in the LI and BP zones. Further, the City is not proposing to introduce cannabis uses into areas of the City designated for visitor-serving uses and therefore no adverse impacts to public access and recreation are anticipated.

In many cases, cannabis-related activities are a form of “development,” as defined in the Coastal Act and the City’s LCP, and require coastal development permits unless the development qualifies for an exemption. For example, the construction of new greenhouse structures or the conversion of an existing use to a cannabis use that results in a change in intensity of use would likely require a CDP. In such case, all policies and standards of the City’s LCP would apply (e.g., setbacks, parking, signage, water quality), and thus adverse impacts on coastal resources would be minimized or avoided.

As described above, through Measure H, the City has adopted a new chapter of their municipal code, Chapter 9.25, which contains definitions, licensing and other procedural and security requirements for cannabis facilities, as well as some locational restrictions and development requirements regarding signage and fencing. While this chapter of the code will not be included as part of the LCP, there will be several references to this chapter in the LCP as amended. Typically, when associated documents or material are referenced in an LCP, those provisions are considered to be incorporated “by reference” and made part of the LCP. However, in this particular case, the notes in the LCP to “See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp related uses” are simply advisory notes identifying the location of the detailed licensing provisions, which do not have the potential to affect coastal resources in any substantial way. The reference in this case is similar to an existing footnote in the City’s definition section Chapter 30.04.010 (Definitions) which references the detailed regulations regarding adult businesses, which are not part of the LCP. Thus, in this case, the Commission finds that Chapter 9.25 does not need to be incorporated by reference into the LCP.

Therefore, the potential for adverse impacts to coastal resources and public access, and conflicts with priority uses, is not anticipated to occur. Thus, as proposed, the LCP amendment conforms with and is adequate to carry out the certified Land Use Plan.



#### **IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 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. 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 submission.

The City determined that this Ordinance is not a “project” subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3) and 15378(c). Section 15378(c) states that the term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval. Here, the activity which is being approved are the cannabis-related activities authorized by Ordinance 2020-18, which was adopted by a voter-sponsored initiative and is therefore exempt from CEQA review pursuant to CEQA Guidelines section 15378(b)(3). The proposed amendments are subsequent approvals required to implement Ordinance 2020-18 as written, therefore City found that the amendments do not constitute a separate “project” and do not require CEQA review.

Further, the City found that even if the proposed Ordinance was considered a project subject to CEQA, it would be exempt from CEQA pursuant to Sections 15301 (Class 1, Existing Facilities), 15303 (Class 3, New Construction or Conversion of Small Structures), and 15332 (Class 32, Infill Development Projects) of the CEQA Guidelines because future construction for cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction projects that will also not have a significant effect on the environment.

In addition, the City found that the Ordinance is statutorily exempt from CEQA pursuant to California Business and Professions Code Section 26055(h). Section 26055(h) exempts by statute the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. In the future, if the proposed Ordinance is adopted, all cannabis-related business license applications submitted to the City will be subject to CEQA, with the California Bureau of Cannabis Control (BCC) acting as the lead agency. The BCC will determine whether each business license application has the potential to generate significant adverse environmental impacts pursuant to CEQA.

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. In this particular case, the LCP amendment will not have any significant adverse effect on the environment and there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse

impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms to CEQA provisions.