

CALIFORNIA COASTAL COMMISSION

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Date: January 18, 2022

To: COMMISSIONERS AND INTERESTED PERSONS

From: KATE HUCKELBRIDGE, EXECUTIVE DIRECTOR

Subject: CITY OF SAN DIEGO DE MINIMIS LOCAL COASTAL PROGRAM AMENDMENT LCP-6-SAN-22-0063-3 (Cannabis Code Amendments) FOR COMMISSION REVIEW AT ITS MEETING OF February 9, 2022

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 (February 8, 2022).

PROPOSED AMENDMENT

The City of San Diego’s LCP amendment request was filed on December 29, 2022.

The City has adopted code amendments related to redistricting and conditional use permit extensions for Cannabis Outlets (CO). 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 consists of language clarifying cannabis regulations related to City Council district boundaries impacted by redistricting following the 2020 census, and

cannabis permit expiration dates. Specifically, the proposed ordinance allows permitted cannabis outlets to continue operating if their location is redistricted into a new City Council district that is at or over the cannabis outlet limitation. The LCP allows no more than four cannabis outlets in each City Council District, except that as proposed, any permitted cannabis outlet that changes district due to redistricting may remain at its originally permitted location. The proposed amendment would also prevent the unlimited extension of cannabis outlet Conditional Use Permits when an applicant submits an application for an amendment but fails to provide requested materials, information, fees, or deposits within 90 calendar days from the date the City deemed the application complete or the City's last written request, whichever is later.

The proposed amendment is presented in attached Ordinance Number O-2023-61. The amendment only affects the certified Implementation Plan and was properly noticed.

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 allows four cannabis outlets in each City Council District. The proposed ordinance clarifies that permitted cannabis outlets may continue operating if their location is redistricted into a new City Council district that is at or over the cannabis outlet limitation. This proposed change would not increase the total number of cannabis outlets allows in a district but rather allow previously permitted outlets to remain. In addition, the ordinance would also prevent the unlimited extension of cannabis outlet Conditional Use Permits when an applicant submits an application for an amendment but fails to provide requested materials, information, fees, or deposits within 90 calendar days from the date the City deemed the application complete or the City's last written request, whichever is later. The current code allows automatic extensions to permit applications that are closed. The proposed ordinance would change the process for applications that are closed.

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-2023-61 amends the City's procedural requirements for redistricting and permit extensions 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.

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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.

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.