

**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT**

TO: Planning Commission

FROM: Anne McIntosh, Director of Community Development

THROUGH: Laurie B. Jester, Planning Manager

BY: Jason Masters, Assistant Planner

DATE: September 13, 2017

SUBJECT: Consideration of Amendments to the Municipal Code and the Local Coastal Program (LCP) to prohibit all commercial cannabis activity in all zones in the City, and to allow limited indoor cannabis cultivation consistent with state law

RECOMMENDATION:

Staff recommends that the Planning Commission **CONDUCT** the public hearing and **ADOPT** the attached draft Resolution (Attachment A) recommending to the City Council approval of the Municipal Code and the Local Coastal Program (LCP) Amendments prohibiting all commercial cannabis activity (both medical and non-medical) in all zones in the City, prohibiting deliveries, prohibiting outdoor cultivation, and allowing indoor cannabis cultivation consistent with State law.

Adoption of the amendments will maintain the City's existing prohibition on commercial cannabis activities and ensures that the City will maintain local control over cannabis businesses once the state commences to issue licenses for commercial cannabis activity on January 1, 2018. At a later date, the City Council may provide additional direction to allow some commercial cannabis activities. In that event, an amendment consistent with City Council direction will be presented to the Commission for review.

BACKGROUND:

A. The Compassionate Use Act and Related Statutes

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate cannabis for medical use under State law. In 2003, the California Legislature adopted SB 420, entitled the Medical Marijuana Program ("MMP"), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate cannabis for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP required or imposed an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical cannabis within its jurisdiction.

In 2015, Governor Brown signed into law the Medical Cannabis Regulation and Safety Act (“MCRSA”). The MCRSA established State licensing requirements for medical cannabis businesses and safety and testing standards for medical cannabis and medical cannabis products. The MCRSA established a dual licensing scheme whereby a medical cannabis business was required to obtain both a local license and a State license to legally operate in the State. The MCRSA allowed a city to maintain local control over whether medical cannabis businesses could operate in its jurisdiction.

B. The Control, Regulate and Tax Adult Use of Marijuana Act of 2016

The Control, Regulate and Tax Adult Use of Marijuana Act (“the AUMA”) was approved by a majority of California voters on November 8, 2016. As a result, it is now legal for persons 21 years of age or older to: (1) smoke or ingest cannabis or cannabis products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and (3) possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in, or upon the grounds of, a private residence.

The AUMA established a comprehensive State licensing system to regulate commercial cannabis activity, which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis products. The AUMA retained local control by requiring that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

The AUMA allows for the planting, cultivating, harvesting, drying and processing (“cultivation activities”) of up to six cannabis plants in, or upon the grounds of, a private residence, as well as the possession of any cannabis produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates those cultivation activities. The AUMA also authorizes a city to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of cannabis is lawful in the State under Federal law.

C. The Medicinal and Adult-Use Cannabis Regulation and Safety Act

On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act

("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018. The City is now required to provide the newly created Bureau of Cannabis Control with a copy of any ordinance related to commercial cannabis activity and the contact information for the person designated by the City to serve as the contact person regarding commercial cannabis activity within the jurisdiction.

D. Problems Associated with Cannabis

Cities in California and across the nation have reported negative effects of cannabis related activities. As cannabis plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary or robbery, and creating the potential for violent acts related to such criminal activity. By prohibiting commercial cannabis activity within City limits, the City is protecting the public health, safety and welfare. In Denver, burglary or attempted burglary accounted for 64% of cannabis-industry-related crime while theft accounted for another 11% of cannabis-industry-related crime in 2014. Overall, cannabis businesses make up less than 1% of all businesses in Denver but account for approximately 11% of all reported business burglaries from 2012-2015.

A 2016 study, "A Micro-Temporal Geospatial Analysis of Medical Cannabis Dispensaries and Crime in Long Beach California" found that an increase of one dispensary per square mile related to a 0.4% to 2.6% increase in property crime. Additionally, greater densities of medical cannabis dispensaries were related to higher rates of violent crimes in areas adjacent to the dispensary locations. The 2016 study found that a citywide decline in dispensaries from the March 2012 peak of 37 dispensaries to the August/September 2013 low of 5 dispensaries, was associated with a decline of 182.5 violent crimes per year and 219.3 property crimes per year. Comparatively, an equivalent drop of alcohol outlets was associated with a decline of only 26.2 violent crimes and 113.9 property crimes per year. These results suggest that local agencies that enact and enforce bans on dispensaries will reduce crime in neighborhoods next to where the dispensaries are located.

Unregulated cultivation enterprises often utilize substandard electrical wiring to avoid detection by illegally and dangerously diverting electricity. Some cities that allow cannabis cultivation operations have reported that the electrical use at these locations often surpasses what the electrical grid can withstand. In addition, indoor cannabis cultivation requires extensive amounts of water, aggravating California's drought conditions. According to the California Department of Fish and Wildlife, cannabis plants use six to eight gallons of water per plant, per day. Indoor cannabis cultivation can also produce dangerous levels of mold because of the combination of warm temperatures and high humidity found in many indoor cultivation operations.

DISCUSSION:

A. The City's Current Cannabis-Related Regulations

Currently Manhattan Beach Municipal Code Section 10.60.160 and LCP Section A.60.160 expressly prohibits medical marijuana dispensaries and commercial medical marijuana activities anywhere in the City. In addition, Sections 10/A.60.160 prohibits the indoor and outdoor cultivation of both medical and non-medical marijuana for commercial or non-commercial purposes.

Although the Planning Commission review is limited to the Zoning regulations, Chapter 10/A, amendments are proposed to Chapter 4 of the Municipal Code related to delivery of marijuana and marijuana products, mobile dispensaries and smoking, which will be reviewed directly by the City Council.

These revisions include Municipal Code Chapter 4.136 to expressly prohibit the delivery of marijuana and marijuana products to or from the City and no person is authorized to conduct or perform any delivery of any marijuana, in which the delivery either originates or terminates in the City. Mobile dispensaries are also prohibited from operating in the City by Chapter 4.136. Section 4.136.040 also reiterates the City's prohibition on indoor and outdoor cultivation of marijuana for commercial or non-commercial purposes.

In addition, Municipal Code Chapter 4.117, relating to the regulation of smoking in multi-unit housing, contains a carve-out exception which permits persons to smoke marijuana in multi-unit housing so long as they hold a valid medical marijuana identification card issued by the State Department of Health Services, which identifies persons who are authorized to engage in the medicinal use of marijuana and his or her designated primary caregiver, if any.

B. The Proposal Prohibits all Types of Cannabis Businesses and Activities

The proposed regulations would delete Municipal Code/LCP Sections 10/A.60.160 and add Chapter 10/A.82 to expressly prohibit commercial cannabis activity and uses, whether for medical or non-medical purposes. The Amendment would also explicitly prohibit outdoor cultivation of cannabis throughout the City, and allow limited indoor cultivation of cannabis at private residences. The proposed regulations also prohibit the delivery of cannabis and cannabis products, which originate or terminate in the City.

The proposal would not prohibit any person from transporting cannabis through the jurisdictional limits of the City for delivery to a person located outside the City, where such transport does not involve delivery within the jurisdictional limits of the City; the City is not authorized to prohibit these activities under State law.

The proposed regulations also would delete Municipal Code/LCP Sections 10/A.60.160 relating to medical marijuana dispensaries and replace these regulations by adding Chapter 10/A.82 to more broadly prohibit commercial cannabis activities for both medical and non-medical cannabis.

The Amendment would add the definition of commercial cannabis activity to Chapters 10/A.82. Commercial cannabis activity is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and/or cannabis products, for medical, non-medical, or any other purposes, and includes the activities of any business licensed by the State under Division 10 of the Business and Professions Code. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transport, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Health and Safety Code section 11362.765.

The proposed regulations would add Municipal Code/LCP Chapter 10/A.82 to specifically prohibit the City from approving an application for a business license for commercial cannabis activity, which would prohibit both medical and non-medical cannabis businesses, whether or not for profit, from operating in the City. Further, the propose Ordinance would prohibit landlords from permitting a tenant to conduct commercial cannabis activity on his or her property.

The proposal also includes a catch-all exception that states the proposed Ordinance shall not prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA. Business and Professions Code section 26054(c) provides that it shall not be a violation of local law for a manufacturer of cannabis accessories to possess, transport, purchase or otherwise obtain cannabis and cannabis products as necessary to conduct research and development related to the cannabis accessories. This catch all exception would ensure that the City is not prohibiting activities that it is preempted from prohibiting pursuant to State law.

Under the proposal violations of Chapter 10/A.82 may be charged as an infraction or a misdemeanor at the discretion of the City Prosecutor. The City Prosecutor may also issue administrative citations for such violations.

C. The Proposal Prohibits Cannabis Cultivation to the Extent Allowed Under State Law

The proposal adds Chapter 10/A.82 to prohibit outdoor cannabis cultivation. Consistent with State law, the proposed Ordinance allows the indoor cultivation of up to six cannabis plants for personal use in a private residence, or inside a fully enclosed and secured structure located at the residential site. As proposed, a “fully enclosed and secure structure” is defined to mean a space within a building, greenhouse or other structure which has a complete solid roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.”

D. The Proposal Exempts the Personal Use of Cannabis to the Extent Allowed Under State Law

Consistent with State law, the proposal contains exemptions that allow persons 21 years of age or older to: smoke or ingest cannabis or cannabis products; possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in a private residence, or inside an accessory structure located upon the grounds of a private residence.

ENVIRONMENTAL REVIEW:

The proposed Ordinance is not a “project” for purposes of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (14 CCR § 15000 et seq.). Since the ordinance would prohibit all commercial cannabis uses, it would not result in any direct physical change in the environment, or reasonably foreseeable indirect physical change in the environment.

PUBLIC INPUT:

A ¼ page display ad public notice for the proposed Municipal Code and LCP Amendments was published in the Beach Reporter newspaper on August 31, 2017, in compliance with state and local law and mailed to the California Coastal Commission. The draft Amendments, including the staff report and attachment, have been made available at the Manhattan Beach County Library, the Police Department and at the Community Development Department, as well as posted on the City’s website.

LEGAL REVIEW:

The City Attorney has reviewed this report and approved as to form the Resolution.

CONCLUSION:

Staff recommends that the Planning Commission conduct the public hearing, accept testimony, discuss the issues, and adopt the attached draft Resolution recommending

to the City Council amendments to the Municipal Code and Local Coastal Program to prohibit all commercial cannabis activity in all zones in the City, and to allow limited indoor cannabis cultivation consistent with state law.

Attachment:

1. Draft Resolution No. PC 17-_____

cc. California Coastal Commission

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RESOLUTION NO. 17-____

A RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL ADD CHAPTER 10.82 TO TITLE 10 OF THE MUNICIPAL CODE AND ADD CHAPTER A.82 TO THE LOCAL COASTAL PROGRAM, PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY IN ALL ZONES IN THE CITY, AND ALLOWING LIMITED INDOOR CANNABIS CULTIVATION CONSISTENT WITH STATE LAW, AND DELETING SECTION 10.60.160 OF CHAPTER 10.60 OF TITLE 10 OF THE MANHATTAN BEACH MUNICIPAL CODE, AND DELETING SECTION A.60.160 OF CHAPTER A.60 OF THE LOCAL COASTAL PROGRAM

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

Section 1. The Planning Commission hereby makes the following findings:

A. On September 13, 2017 the Planning Commission conducted a public hearing, and reviewed proposed text amendments to add Chapter 10.82 and delete section 10.60.160 of the Municipal Code, part of the City's Zoning Ordinance, and add Chapter A.82 and delete section A.60.160 of the Local Coastal Program.

B. Notice of the Planning Commission public hearing for September 13, 2017 included a ¼ page display ad public notice published in *The Beach Recorder*, a newspaper of general circulation in Manhattan Beach.

C. The proposed text amendments have been prepared in accordance with the provisions of Title 7, Division 4, Section 65853, *et seq.*, of the State of California Government Code.

D. The proposed text amendments are exempt from the requirements of the California Environmental Quality Act, pursuant to the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations.

E. The proposed text amendments are consistent with the following General Plan Goals and Policies:

Land Use Element Goal LU-5: Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.

Community Safety Element Goal CS-1: Minimize the risks to public health, safety, and welfare resulting from natural and human-caused hazards.

F. The proposed text amendments are consistent with the following Local Coastal Program Policy:

II. Coastal Locating and Planning New Development Policy- Policy II.1: Control Development within the Manhattan Beach coastal zone.

Section 2. The Planning Commission recommends that the City Council add Chapter 10.82 (Commercial Cannabis Activity) of Part IV (Site Regulations) of Title 10 (Planning and Zoning) of the Manhattan Beach Municipal Code and Chapter A.82 (Commercial Cannabis Activity) of Part IV (Site Regulations) of the Local Coastal Program (Phase III Implementation Program) to substantially read as follows:

“Chapter 10/A.82 COMMERCIAL CANNABIS ACTIVITY

Section 10/A.82.010 Definitions.

Section 10/A.82.020 Prohibitions.

Section 10/A.82.030 Exceptions.

Section 10/A.82.040 Violation, penalty.

10/A.82.010 Definitions.

For purposes of this chapter, the following definitions shall apply.

A. “Cannabis” means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis, and any product containing cannabis. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes.

“Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5, as the same may be amended from time to time.

B. “Cannabis accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not, limited to concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and cannabis products, for medical, non-medical or any other purpose, and

includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any other provision of State law that regulates the licensing of cannabis businesses.

E. “Concentrated cannabis” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

H. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

I. “Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete solid roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

J. “Indoors” means within a fully enclosed and secure structure.

K. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

L. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

M. “Outdoors” means any location that is not within a fully enclosed and secure structure.

N. “Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, collective, cooperative, club, society, organization, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

O. “Private residence” means a house, an apartment unit, a condominium unit, a mobile home, or other similar dwelling, that is lawfully used as a residence.

10/A.82.020 Prohibitions.

A. Commercial cannabis activity, whether or not for profit, is not a permitted use anywhere in the city. The city shall not approve any application for a building permit,

conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial cannabis activity. This section shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time.

B. It shall be unlawful for any person to own, manage, establish, conduct, or operate, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any commercial cannabis activity in the city.

C. To the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products to or from any location in the city are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

D. All outdoor cannabis cultivation is prohibited in the city. Indoor cannabis cultivation is prohibited except as specified in section 10.82.040(A)(5).

10/A.82.030 Exceptions.

A. To the extent that the following activities are permitted by State law, nothing in this chapter shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever; or

4. Engaging in the indoor cultivation of six or fewer live cannabis plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by California Health and Safety Code sections 11362.1 and 11362.2, as the same may be amended from time to time.

B. This chapter shall also not prohibit any commercial cannabis activity that the city is required by law to permit within its jurisdiction pursuant to state law.

10/A.82.040 Violation, penalty.

Violations of this chapter are subject to the penalty provisions set forth in Municipal Code Chapters 1.04 and 1.06. In the discretion of the City Prosecutor, a violation of this chapter may be prosecuted as an infraction or misdemeanor. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Municipal Code Chapters 1.04 and 1.06, this chapter does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 et seq. or Section 11362.1 et seq., as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Municipal Code Chapters 1.04 and 1.06, and any penalties set forth in state law, the maximum penalties allowable under state law shall govern."

Section 3. The Planning Commission recommends that the City Council delete Section 10.60.160 (Medical Marijuana Dispensaries) of Chapter 10.60 (Site Regulations-All Districts) of Part IV (Site Regulations) of Title 10 (Planning and Zoning) of the Manhattan Beach Municipal Code and Section A.60.160 (Medical Marijuana Dispensaries) of Chapter A.60 (Site Regulations-All Districts) of Part IV (Site Regulations) of the Local Coastal Program (Phase III Implementation Program) in their entirety.

Section 4. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of September 13, 2017 and that said Resolution was adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Anne McIntosh
Secretary to the Planning Commission

Rosemary Lackow
Recording Secretary

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CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
SEPTEMBER 13, 2017

(DRAFT)

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 13th day of September, 2017, at the hour of 6:00 p.m., in the City Council Chambers, at 1400 Highland Avenue, in said City.

1. ROLL CALL

Present: Burkhalter, Morton, Seville-Jones, Chairperson Apostol
Absent: Ortmann
Others Present: Anne McIntosh, Director of Community Development
Ted Fatuross, Assistant Planner
Jason Masters, Assistant Planner
Michael Estrada, Assistant City Attorney

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2. AUDIENCE PARTICIPATION (3-minute limit) – None

3. APPROVAL OF THE MINUTES

09/13/17-1. Regular meeting – July 26, 2017

It was moved and seconded (Jones/Burkhalter) to approve the minutes of July 26, 2017 with no changes; there being no objections it was so ordered.

4. PUBLIC HEARING

09/13/17-2. Consideration of Amendments to the Municipal Code and Local Coastal Program (LCP) Related to Urgent Care Medical Uses

Chair Apostol announced the public hearing and invited staff to present the staff report.

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Assistant Planner Ted Fatuross presented a summary report, covering: background and direction from Council; regulation of urgent care facilities; locations of existing urgent care facilities; neighborhood concerns (e.g. noise from ambulances, loitering by drug addicts, extended hours, parking and traffic); and policy options. Mr. Fatuross concluded with the Staff recommendation and Director McIntosh added that the City Council directed that urgent care facilities specifically be brought before the Commission for a focused discussion based on input from residents.

Staff responded to questions noting: 1) Staff is not aware of any complaints received from residents regarding the three currently operating urgent care facilities; 2) Staff sent an email to Exer Urgent Care which did not respond, and also called and left messages for the other existing urgent care businesses again, with no response. Staff also emailed notice to a number of interested parties but received no input; 3) The current code has no cap in operating hours for medical offices.

PUBLIC HEARING

Chair Apostol opened the public hearing.

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Steve Packwood, resident, noted his background as a health care administrator with experience in setting up urgent care facilities, does not believe that such facilities are medical offices. He noted that Exer is advertising that they can provide up to 80% of the volume of services that can be obtained at an emergency room and he has observed a large number of parked cars at another Exer location. He believes that the City should redefine urgent care facilities in the code based on concerns such as parking problems and lack of security due to on-site pharmacies. Mr. Packwood noted he lives on Oak Avenue up the street from the Exer facility.

Nicole Barkopoulos, lives on Oak Avenue with her backyard adjoining Exer and understands that this hearing is about urgent care facilities citywide. She objects to the fact that as currently in the code, public notification is not required for new urgent care facilities. She believes that urgent care facilities are not medical offices and are more intense, and conditional use permits should be required to ensure, by more careful vetting process, the security of nearby residents by looking carefully at safety, parking, lighting, and signage.

Director McIntosh advised that a Use Permit is required for all commercial buildings over 5,000 square feet.

Dr. Paul Barkopoulos, underscored concerns expressed by his wife, Nicole. He and neighbors have researched urgent care facilities and there is a strong concern that such uses, while providing additional medical services, are really more like small emergency rooms. Because they are designated medical offices and sign up under a physician’s license, they can get around state regulations that would otherwise be imposed on an emergency care facility. He believes that a use permit should be required with traffic impact and parking demand analyses to be reviewed and overall, more oversight by the City.

DISCUSSION

Chair Apostol closed the public hearing and opened the floor for Commission discussion.

Commissioner Burkhalter noted that he was surprised to see that these urgent care medical uses are classified as offices and believes that they are closer to an emergency care; therefore it seems appropriate that a use permit would be required with specific guidelines.

Commissioner Seville-Jones stated that she appreciates the comments made by residents. She recognizes, however, that the state has the responsibility to decide what services can be given by an emergency room and urgent care facilities and doesn’t quite see a need to classify urgent care the same as an emergency room. She believes the Commission’s focus is to determine whether urgent care facilities should be classified differently from medical offices or pharmacies or other commercial uses permitted in the commercial zone and if so, whether a use permit or additional requirements should be imposed. She does not see empirical evidence to suggest the described impacts will occur and further while she understands that when businesses change over to a more intense use this is upsetting, doesn’t believe that this, in and of itself, is a reason to require a use permit.

Commissioner Morton falls on the side that it is the state’s responsibility to regulate the differences between emergency care and emergency rooms, believes there are distinct differences and it is telling that there are very few cities that regulate urgent care in a specific way. Although he understands that concerns arise due to intensification, he does not believe this issue merits the City getting out in front and creating more restrictive regulations at this time.

Chair Apostol commented that he believes all the residents comments are valid, and is somewhat on the fence because he also believes in principal that over-regulating and being overly-restrictive is not useful and perhaps additional research is needed. He requested clarification of the Council’s direction.

Director McIntosh clarified City Council direction in terms of policy and timing. The sole specific direction from Council is to submit an ordinance creating a new definition for “urgent care.” Beyond this the Commission could consider, with no specific mandate, whether specific performance measures should be adopted to apply to the definition and, lastly what the level of review for “urgent care” should be (e.g. should a use permit be required?). Further clarifications were provided: currently staff recommends to not require a use permit; the Council has not requested that the Commission act before it addresses the extension of the Interim Zoning Ordinance (IZO) on health care uses; a new definition with a subset of standards could be adopted that would regulate this use without a use permit; refining the code that regulates urgent care, may also address whether changes in use are considered an “intensification” that could trigger a use permit requirement; and currently the code is silent on whether urgent care is a subset of the medical office use classification.

Chair Apostol initiated discussion on guidance: that Staff should research and come back with a definition and possible operating guidelines, and also look into how to categorize and distinguish the urgent care use from medical offices. He agrees with public input that urgent care is different from medical offices but the question is: what are the important differences?

Commissioner Seville-Jones suggested an approach that urgent care be distinguished from but regulated at

the same level as medical offices. She cautioned, however, that deciding performance standards (e.g. limits in operating hours and distance of front doors to residences) can be tricky especially as many residential uses along Sepulveda adjoin commercial, and that could be setting an undesirable precedent of singling out businesses.

Commissioners Morton and **Chair Apostol** agreed with Commissioner Seville-Jones comments on exercising caution. Chair Apostol acknowledged public input suggesting that operating hours for urgent care should in fact, be extended longer so as to accommodate the need for medical care that can arise at all hours.

Director McIntosh noted Staff would propose a definition that clarifies the differences between urgent care and medical offices. Staff has provided a definition provided by the American Academy of Urgent Care Medicine but has found that there is no clear definition in the state regulations. She further noted that there has been a rise in new technology allowing more patients to be seen in urgent care, and that some distinctions between the two uses may be only a matter of difference in business practices which should be taken into account.

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The Commission discussed and it was agreed that more information is needed including: 1) Pasadena’s regulations; 2) which services can be provided in a traditional doctor’s office vs. which need an ER at a hospital; 3) what role, if any, do office hours, and/or having certain types of equipment play; and 4) info as to parking demand for urgent care uses, and whether more is required compared to traditional medical offices.

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ACTION

It was moved and seconded (Apostol/Seville-Jones) to REOPEN and CONTINUE THE PUBLIC HEARING to October 11th. It was clarified that the continuance is to enable the staff to research and provide more information and that there will be an opportunity for additional public comment at the continued hearing.

Roll Call:

AYES:	Burkhalter, Morton, Seville-Jones, Chairperson Apostol
NOES:	None
ABSENT:	Ortmann
ABSTAIN:	None

Commissioner Morton encouraged Staff to reach out to the owners/operators of existing urgent care facilities.

09/13/17-3.	Consideration of Amendments to the Municipal Code and Local Coastal Program (LCP) to Prohibit All Commercial Cannabis Activity in All Zones in the City, and to Allow Limited Cannabis Cultivation Consistent with State Law.
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Chair Apostol invited Staff to make a presentation.

Director McIntosh informed on January 1, 2018 there will be a new state law in effect for cannabis cultivation. The ordinance presented tonight protects the City’s right to continue its current prohibitions.

Assistant Planner Jason Masters provided a report covering: legal background, state licensing including the recent passage of SB 94, concerns and issues, studies, the City’s authority and existing regulations. He went over in detail the proposed ordinance, its enforcement (infraction or misdemeanor), exemption under CEQA, public notification and the Staff recommendation.

Staff responded to questions: the language “commercial transfer of cannabis” is taken out of state law, and simply means cannabis that is sold and not being given away; the difference in the proposed code is it reflects a comprehensive law, addressing both medical marijuana and all commercial cannabis activities; and that greenhouses are explicitly addressed in the definition of a “fully enclosed and secure structure”.

Chair Apostol invited public comment, seeing none, called for a motion.

It was moved and seconded (Burkhalter/Morton) to ADOPT the draft Resolution with no change RECOMMENDING amendments to the Municipal Code/Local Coastal Program relative to cannabis activity and cultivation citywide.

Roll Call:
AYES: Burkhalter, Morton, Seville-Jones, Chairperson Apostol
NOES: None
ABSENT: Ortmann
ABSTAIN: None

5. DIRECTOR’S ITEMS

Director McIntosh announced:

- November 8th Planning Commission meeting will likely be cancelled as the City Council meeting date has been moved to this date due to conflict of regular meeting with Election Day.
- September 26th, 6:00 – 8:00 PM, all interested parties are encouraged to attend a Community Telecom Workshop at the Police and Fire Facility Conference Room. A link on the City’s website provides more details.

6. PLANNING COMMISSION ITEMS – None

7. TENTATIVE AGENDA – September 27, 2017 – no new information.

8. ADJOURNMENT

The meeting was adjourned at 7:30 P.M. to Wednesday, September 27, 2017 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

ROSEMARY LACKOW
Recording Secretary

ATTEST:

ANNE MCINTOSH
Community Development Director

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