



AGENDA

CITY OF SEASIDE
PLANNING COMMISSION

SPECIAL MEETING
COUNCIL CHAMBER
440 Harcourt Avenue
Wednesday, December 16, 2015
7:00 PM

PLEASE TURN OFF YOUR CELL PHONES UPON ENTERING THE MEETING

1. **CALL TO ORDER**

2. **ROLL CALL - ESTABLISHMENT OF QUORUM**

John Owens	Chair
Michael Lechman	Vice Chair
Keith Dodson	Commissioner
Margaret Leighton	Commissioner
Arlington LaMica	Commissioner
Denise Ross	Commissioner

3. **REVIEW OF AGENDA**

If there are any items that arose after the 72-hour posting deadline, this is the point in the meeting where a vote may be taken to add the item to the agenda. (A 2/3-majority vote is required).

4. **PUBLIC COMMENT**

5. **APPROVAL OF MINUTES**

6. **BUSINESS ITEMS**

- A. **Seaside Municipal Code Amendment No. SMA-15-03: THE CITY OF SEASIDE, APPLICANT, IS REQUESTING APPROVAL OF TEXT AMENDMENTS TO AMEND SECTION 17.52.150 OF THE MUNICIPAL CODE DEFINING AND PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY.**

PURPOSE:

The purpose of this agenda item is to provide the City Council with a recommendation on a proposed Ordinance to approve text amendments to Section 17.52.150 of the municipal code amendment defining and prohibiting medical marijuana dispensaries, cultivation of marijuana and all commercial medical marijuana uses in the City.

RECOMMENDATION: It is recommended that the Planning Commission recommend approval to the City Council, of the draft Resolution provided as Attachment 1 defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

7. **REPORTS FROM COMMISSIONERS**

8. **REPORTS FROM STAFF**

9. **ADJOURNMENT**

Next Regularly Scheduled Meeting:
Wednesday, January 13, 2015
Seaside City Hall
7:00 PM

The City of Seaside is an ADA accessible facility and is committed to include the disabled in all of its services, programs and activities. Any person who requires accommodation to be able to participate in this meeting is asked to contact the office of the City Clerk at 899-6707, no fewer than two business days prior to the meeting to allow for reasonable arrangements.

The City Council Chambers is equipped with a portable microphone for anyone unable to come to the podium. Assisted listening devices are also available.

Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Meetings are also available through live streaming at: <http://cvp.telvue.com/player?id=T01629&video=52314&noplaylistskin=1&width=400&height=300> Videos of past meetings are available on demand through the City's website: <http://www.ci.seaside.ca.us>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 7.A.

TO: Planning Commission

BY: Lisa Brinton, Community and Economic Development Services Manager
Diana Ingersoll, Deputy City Manager Resource Management Services
Rick Medina, Senior Planner

DATE: December 16, 2015

SUBJECT: **Seaside Municipal Code Amendment No. SMA-15-03: THE CITY OF SEASIDE, APPLICANT, IS REQUESTING APPROVAL OF TEXT AMENDMENTS TO AMEND SECTION 17.52.150 OF THE MUNICIPAL CODE DEFINING AND PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY.**

PURPOSE

The purpose of this agenda item is to provide the City Council with a recommendation on a proposed Ordinance to approve text amendments to Section 17.52.150 of the municipal code amendment defining and prohibiting medical marijuana dispensaries, cultivation of marijuana and all commercial medical marijuana uses in the City.

RECOMMENDATION

It is recommended that the Planning Commission recommend approval to the City Council, of the draft Resolution provided as Attachment 1 defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

BACKGROUND

On August 17, 2007, the City of Seaside City Council unanimously adopted Ordinance No. 963, which prohibits the location and operation of medical marijuana dispensaries within any zone within the corporate boundaries of the City of Seaside. The adoption of this Ordinance established Section 17.52.150 to include a definition of medical marijuana dispensaries and explicitly prohibit such uses.

On October 9, 2015, Governor Brown signed 3 bills (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter "MMRSA").

The MMRSA set up a State licensing process for commercial medical marijuana uses while protect local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority.

The MMRSA allows the City to completely prohibit commercial medical marijuana activities; however, the City's Municipal Code must be revised to address the language contained in MMRSA. The City Attorney has provided staff with the attached Municipal Code Amendments that will allow the City to retain local authority over medical marijuana activities. The proposed amendments were considered by the City Council at its December 17, 2015 meeting in order for the Ordinance to go into effect by March 1, 2016.

Pursuant to Section 17.74.040 of the Seaside Municipal Code, proposed amendments to the Title Seaside Municipal Code are to be reviewed by the Planning Commission prior to going before the City Council. City staff has drafted a resolution, which recommends that the City Council adopt Ordinance amending the text of Municipal Code Section 17.52.150 defining and prohibiting medical marijuana dispensaries, cultivation of marijuana and all commercial medical marijuana uses in the City. The amendments include eliminating the previous prohibition of medical marijuana in Section 17.52.150 and adding the new language.

Environmental Review. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning ordinance already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will result in no changes.

FISCAL IMPACT

There is no fiscal impact associated with this item.

ATTACHMENTS

1. Attachment 1 - Draft Resolution; Exhibit A - Section 17.52.040 amendment
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RESOLUTION No. 15-XX.

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF SEASIDE ADOPT AN ORDINANCE AMENDING SECTION 17.52.150 OF THE SEASIDE MUNICIPAL CODE DEFINING AND PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”).

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code §11362.7 et seq. and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

WHEREAS, in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...” Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana...” The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes,

although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

WHEREAS, on October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

WHEREAS, the City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

WHEREAS, the limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

WHEREAS, on August 16, 2007, the Seaside City Council unanimously adopted Ordinance No. 963, to prohibit the location and operation of medical marijuana dispensaries/distribution facilities within any zone within the corporate boundaries of the City of Seaside.

WHEREAS, the MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

WHEREAS, while the City Council believes that cultivation and all commercial medical marijuana uses are already prohibited under the City’s permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

WHEREAS, the Planning Commission held a duly noticed public hearing on December 9, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

Section 1. Recitals. The Planning Commission hereby finds that the foregoing recitals are true and correct.

Section 2. CEQA Findings. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning ordinance already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 3. Planning Commission Review and Recommendation. Pursuant to Zoning Code Chapter 17.74.040, the Planning Commission has reviewed the proposed Zoning Code amendments set forth in Exhibit A. The Planning Commission hereby recommends their adoption by the City Council.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SEASIDE this 9th day of December 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John Owens, Planning Commission Chair

ATTEST

Planning Commission Secretary

Exhibit A

1. Section 17.52.040 is amended as follows:

Section 17.52.150 Medical Marijuana

A. Purpose

1. To comply with federal law regulating the production and distribution of marijuana, including but not limited to the Controlled Substances Act; and
2. To prevent and abate land use compatibilities, public nuisances, and threats to the general welfare generated by land uses not in compliance with federal law regarding the production, storage, and/or distribution of a Schedule I drug under the federal Controlled Substance Act.

B. Definitions.

1. Medical Marijuana. Marijuana authorized in strict compliance with and as set forth in California Health and Safety Code Section 11362.5 et. sq.
2. ~~Medical marijuana dispensary. Any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. All three of these terms are identified in strict accord with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this Code and other applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code; as long as any such use complies strictly with applicable law including but not limited to, Health and Safety Code Section 11362.5 et seq.~~
3. ~~Person with an identification card. Shall have the meaning given that term by Health and Safety Code Section 11362.7.~~
4. ~~Primary caregiver. Shall have the meaning given that term by Health and Safety Code Section 11362.7.~~
5. ~~Qualified patient. Shall have the meaning given that term by Health and Safety Code Section 11362.7.~~
2. Medical Marijuana Dispensary. Any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or

distributed to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. All three of these terms are identified in strict accord with California Health and Safety Code Section 11362.5 et seq.

3. Person with an identification card. Shall have the meaning given that term by Health and Safety Code Section 11362.5 et seq.
4. Primary caregiver: Shall have the meaning given that term by Health and Safety Code Section 11362.7.
5. Qualified patient. Shall have the meaning given that term by Health and Safety Code Section 11362.7.

C. Dispensaries prohibited.

No medical marijuana or cannabis dispensary or distribution facility as defined in Section 7.52.150 A. of the Seaside Municipal Code or in Business & Professions Code § 19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Seaside. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility.

D. Commercial marijuana activities prohibited.

Commercial marijuana or cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transport, delivery, dispensing, transfer, distribution, or sale of medical cannabis or medical cannabis products all as defined under Business & Professions Code Sec. 19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Seaside. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

E. Deliveries of medical marijuana prohibited.

All deliveries of medical cannabis as defined under Business & Professions Code Sec. 19300.5, as the same may be amended from time to time, are expressly prohibited within the City of Seaside, including the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. No person shall conduct any deliveries that either originate or terminate within the City.

F. Cultivation of Marijuana prohibited.

Cultivation of marijuana or cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Seaside. No person, including a

qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

G. Intent

This Chapter is meant to prohibit all medical marijuana or commercial cannabis activities, including but not limited to those for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

H. Unlawful Uses.

Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.