



City Council Agenda Item

City Council Meeting Date: December 15, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Jeff M. Malawy, City Attorney
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SUBJECT: Initiation of Amendments to Zoning Code and General Plan to Allow Distribution Uses in the Planned Commercial Development Zone and to Allow Cannabis Events

Recommendation:

Staff recommends the City Council:

- 1) Initiate and direct staff to conduct further analysis of potential Lompoc Municipal Code (LMC) and General Plan amendments to allow distribution uses (including but not limited to cannabis distribution) in the Planned Commercial Development (PCD) zone, and bring this issue to the Planning Commission for discussion and recommendations to City Council; and
- 2) Table the cannabis events item until spring of 2021 and bring it back to City Council for further review at that time.

Introduction / Summary:

The issues of cannabis distribution in the PCD zone and cannabis events were on the agenda at the City Council meeting of November 17, 2020. Following consideration of the item, the Council directed staff to (1) conduct further analysis of potential LMC and General Plan amendments to allow *all* types of distribution uses (including but not limited to cannabis distribution) in the PCD zone, and bring this issue to the Planning Commission for discussion and recommendations to City Council; and (2) table the cannabis events item until spring of 2021 and bring it back to City Council for further review at that time.

After the November 17 meeting, the City received a communication from Terry Hammons (Attachment 1), alleging the City Council's direction exceeded the scope of the agenda description for the item by providing direction as to *all* distribution uses in the PCD zone rather than just cannabis distribution, and therefore allegedly violated the Brown Act.

Pursuant to Government Code section 54960.1, an alleged Brown Act violation may be "cured" within 30 days of receiving Mr. Hammons' letter. **Therefore, in an abundance**

of caution, this is a “re-do” of the item with all distribution uses now on the agenda, in order to cure any alleged Brown Act issue with the November 17 agenda. City Council approval of this item will give staff the exact same direction as the City Council already gave on November 17, 2020.

What follows below is a slightly modified version of the staff report presented on November 17, 2020. Staff’s recommendation is identical to the motion that was already approved by the City Council on November 17, 2020.

Background:

At the February 18, 2020, City Council meeting, a majority of Council Members approved a request to bring back an agenda item concerning amendment of the LMC in order to (i) allow cannabis distribution in the PCD Zone and (ii) allow cannabis events. An amendment to the Zoning Code within the LMC or the General Plan may be initiated by the City Council, the Planning Commission, or a property owner. (LMC 17.604.020(A).)

Cannabis Distribution in the PCD Zone (General Commercial Designation)

The only cannabis uses currently allowed in the PCD Zone are dispensaries (retail) and cannabis testing laboratories. Attachment 2 is a map showing all PCD Zoned properties (a total of 267). The majority of those parcels front Central Avenue, H Street and Ocean Avenue. No other cannabis uses are currently allowed in commercial zones.

The City’s Industrial (I) and Business Park (BP) zones also permit dispensaries and cannabis testing laboratories, as well as cannabis cultivation and cannabis manufacturing.

Cannabis distribution or wholesale is not currently permitted as a stand-alone use in any zone, but is instead included in the definition of “Cannabis Manufacturing,” and is therefore currently only allowed in the I and BP Zones. “Distribution” is a defined term in the City’s cannabis ordinance and state law (LMC Chapter 9.36 and Business & Professions Code 26001(r)), which define it as “the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to State Law.”

Rather than retail sale by a dispensary to a customer, Distribution is the wholesale and transportation of cannabis or cannabis products in bulk, where the entity purchasing the cannabis or cannabis products is a retailer, not an end user. Distribution would also potentially include storage of large amounts of cannabis and cannabis products on site while awaiting transport or sale. Although this use is not currently within the intent or purpose of the PCD Zone or the corresponding land use designation, the General Plan Land Use Element and Zoning Code could be amended to allow Distribution.

If the City Council wishes to proceed with these amendments, then Planning staff recommends that performance standards and design requirements be adopted for this type of use, and recommends that the use require a Conditional Use Permit (CUP) to

allow for departmental and Planning Commission review and consideration of potential impacts (odor, crime, traffic/circulation, aesthetics, etc.) and neighborhood compatibility.

Cannabis Events

Under Business & Professions Code § 26200(e), which became effective January 1, 2019, the City may permit temporary cannabis events, at locations designated by the City, where participants who are 21 years of age or older may sell and consume cannabis. An event would very likely take place outdoors and would likely take the form of a festival or expo where vendors would be selling cannabis and eventgoers could smoke or otherwise consume cannabis. State law places several restrictions on such events, which include the following:

1. Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.
2. Cannabis consumption may not be visible from any public place or non-age-restricted area.
3. Sale or consumption of alcohol or tobacco is not allowed on the premises where the event takes place.
4. All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event must have a state cannabis license.
5. The California Bureau of Cannabis Control may require the event and all participants to cease operations without delay if, in the opinion of the Bureau or local law enforcement, it is necessary to protect immediate public health and safety.
6. The smoking of cannabis or cannabis products at temporary events is prohibited in locations where smoking is prohibited by state law.

Cities can adopt additional regulations on cannabis events, including, for example, the requirement to have a Lompoc cannabis license (rather than just a state license to operate in another city), and restrictions on the locations and size of cannabis events.

The City has broad prohibitions against smoking in both enclosed and unenclosed locations throughout the City, including in all parks and other City-owned recreational areas. (LMC Chapter 8.16.) Those prohibitions also apply to smoking cannabis. If the City Council wishes to allow smoking of cannabis at cannabis events in parks, an exception to the prohibition could be adopted.

Other Distribution Uses in PCD Zone

Staff also requests direction from the City Council concerning whether to prepare LMC and General Plan amendments that would allow all or specific other distribution uses in the PCD Zone, in addition to cannabis distribution.

Discussion:

Based on staff's preliminary analysis, permitting cannabis distribution in the PCD Zone and permitting cannabis events would require the following actions:

Cannabis Distribution in the General Commercial (GC) Designation and PCD Zone

1. **General Plan Amendment.** Amend the purpose and description of the GC land use category in the Land Use Element of the City's General Plan. All areas zoned PCD are within the GC land use category. The current purpose and description of the GC land use category are as follows:

Purpose

To provide commercial areas for a wide variety of retail, office, and service-oriented enterprises which meet the needs of residents and visitors. To accommodate commercial uses which operate more effectively outside the other commercial areas of the community.

Description

Commercial areas characterized by a variety of retail, office, and visitor-oriented businesses that rely upon automobile access rather than pedestrian access. This category provides a wide range of goods and services accessed by high volume roadways. Appropriate uses include destination retail, community and regional shopping centers, visitor-oriented businesses, and automobile oriented business.

The purpose and description would need to be amended to include cannabis distribution.

2. **LMC Amendments.**
 - A. Amend LMC Chapter 17.212 (Commercial Zones) to make Cannabis Distribution a permitted use with a CUP in the PCD Zone.
 - B. Amend LMC § 17.708.020 (Land Use Types) to add a definition of "Cannabis Distribution."

Cannabis Events

1. LMC Amendments.

- A. Amend LMC Chapter 9.36 (Cannabis Uses) to allow and establish regulations for cannabis events, and establish an application process.
- B. Amend LMC Chapter 17.544 (Temporary Use Permits) to allow cannabis events as a temporary use.
- C. As appropriate, amend LMC Chapter 8.16 (Regulation of Smoking) and Chapter 9.36 (Cannabis Uses), as well as relevant parks policies, to allow smoking of cannabis at cannabis events.
- D. As appropriate, amend LMC Title 17 (Zoning Code), Division 2, to specify zones or specific locations where cannabis events are permitted.

2. Guidance Regarding Permitted Locations for Cannabis Events.

Cannabis events are only allowed in locations designated by the City. Therefore, if the City Council wishes to permit those events, then staff requests guidance from the City Council as to where it would like those events to be permitted. Alternatively, the City Council can wait to receive a recommendation from the Planning Commission before giving input on proposed locations. As another option, the City could establish general requirements concerning the location of cannabis events and applications could be assessed on a case-by-case basis to determine if the proposed location meets City requirements. The Planning Commission would review that option as well and make a recommendation to the City Council.

Environmental Review

Amendments to the LMC and General Plan to allow cannabis distribution in the PCD Zone, and to establish a process for permitting cannabis events, would be exempt from California Environmental Quality Act (CEQA) review pursuant to Business & Professions Code, subdivision 26055(h), as long as some discretionary action is required before each permit could be issued. CEQA review would then be needed prior to approval of a cannabis distribution use in the PCD Zone or a cannabis event permit, as currently is required for the issuance of every cannabis license. If the LMC or General Plan amendments result in no discretionary action being needed for permitting the use, then CEQA analysis would be required before those amendments are approved.

Future Actions

At this time, the City Council is only being asked to decide whether to initiate the General Plan and LMC amendments discussed above, and to provide preliminary guidance to staff on those amendments. If the City Council decides to initiate the proposed

amendments, then staff will prepare the amendments and present them to the Planning Commission. Staff will then bring the Planning Commission's recommendation to the City Council for final review and possible adoption of the amendments.

Fiscal Impact:

Preparation of the proposed LMC and General Plan amendments will require costs for staff and City Attorney time. If the amendments are originated by an applicant request, rather than by the City Council, then those costs will be covered, at least in part, by the applicant's application fees.

Conclusion:

Staff requests the City Council's direction regarding whether to begin the process of preparing the LMC and General Plan changes discussed in this staff report.

Respectfully submitted,



Jeff M. Malawy, City Attorney

Attachments: 1) November 22, 2020 Email from Terry Hammons
: 2) Map of Planned Commercial Development (PCD) Zone Parcels