

**ORDINANCE No. 17-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH  
AMENDING GROVER BEACH MUNICIPAL CODE SECTIONS 2.40.020, 2.40.030, 6.10.020,  
AND 9.10.020 OF ARTICLE IX, AND ADDING SECTION 4.10.045 OF ARTICLE IX, TO  
ALLOW THE ESTABLISHMENT OF COMMERCIAL CANNABIS USES FOR THE  
CULTIVATION, MANUFACTURING, DISPENSATION, TRANSPORTATION, DISTRIBUTION  
AND TESTING OF MEDICAL MARIJUANA AND MEDICAL MARIJUANA PRODUCTS**

**WHEREAS**, the City of Grover Beach is a General Law city organized pursuant to Article XI of the California Constitution; and

**WHEREAS**, pursuant to the authority granted the City by Article XI, Section 7 of the California Constitution, the City has the police power to adopt regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or public safety; and

**WHEREAS**, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police power; and

**WHEREAS**, the Ordinance requires a Local Coastal Program Amendment because it amends Development Code Sections 2.40, 4.10, 6.10, and 9.10 that affects the Coastal Industrial (CI) and Coastal Industrial Commercial (CIC) Zones; and

**WHEREAS**, the Planning Commission held a public hearing on April 12, 2017 and recommended the City Council approve the Development Code amendment; and

**WHEREAS**, the Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq. classifies marijuana as a Schedule 1 Drug and makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense, marijuana; and

**WHEREAS**, the Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation or possession of marijuana for medicinal purposes; and

**WHEREAS**, notwithstanding federal law, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996"), the intent of Proposition 215 being to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances; and

**WHEREAS**, in 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act" to clarify the scope of the Compassionate Use Act of 1996 ("CUA"); and

**WHEREAS**, the Medical Marijuana Program Act ("MMPA") promulgates rules wherein counties and cities can adopt and enforce rules and regulations consistent with its provisions; and

**WHEREAS**, in 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768) affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider; and

**WHEREAS**, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4<sup>th</sup> 729, 753 (“*Inland Empire*”) that the objectives of the CUA and MMPA were modest and that those acts did not create a broad right to access medical marijuana, and *Inland Empire* goes on to provide that neither the CUA nor the MMPA “expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude” the distribution of medical marijuana. (Id. At p. 762.); and

**WHEREAS**, the Court of Appeal, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975, that the reasoning of *Inland Empire* applies to the cultivation of medical marijuana as well as its distribution, as both are addressed in the CUA and the MMPA; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“MMRSA”) into law; and

**WHEREAS**, the MMRSA, which is comprised of three separate pieces of legislation, establishes, among other matters, a dual licensing structure requiring both a state license and a local license or permit for medical marijuana activities, a regulatory structure imposing health, safety and testing standards for cultivation and dispensary facilities, and the criteria for licensing medical marijuana businesses; and

**WHEREAS**, with limited exceptions, neither the Compassionate Use Act, the Medical Marijuana Program, the Medical Marijuana Regulation and Safety Act, nor the Adult Use of Marijuana Act require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities for distribution, cultivation, manufacturing or processing medical or non-medical marijuana within its jurisdiction, and

**WHEREAS**, notwithstanding the comprehensive nature of both the Adult Use of Marijuana Act and the MMRSA, both Acts under state law protect the ability of local entities to maintain reasonable control over medical and non-medical marijuana activities; and

**WHEREAS**, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of medical marijuana-related businesses and personal use which are intended to operate in conjunction with the City of Grover Beach Development Code’s land use regulation and which are intended to address the negative impacts and nuisance impacts of marijuana-related businesses and use; and

**WHEREAS**, medical marijuana-related businesses and personal use will be subject to the zoning and land use regulations as set forth in Article IX, Development Code, of the City of Grover Beach Municipal Code; and

**WHEREAS**, mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council’s intention that nothing in this ordinance shall be construed, in anyway, to expand the rights of anyone to use or

possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, testing or consumption of marijuana that is otherwise illegal. It is further the intent of the City Council of the City of Grover Beach to maintain local control over these matters to the fullest extent permitted by law; and

**WHEREAS**, a Negative Declaration was prepared for the project in conformance with the California Environmental Quality Act that concluded that the Development Code amendment would not have a significant impact on the environment.

**WHEREAS**, the City Council of the City of Grover Beach makes the following findings that the project is consistent with the applicable policies and requirements of Chapter 6 of the Local Coastal Program as follows:

*Policy 6.7.1.(6) Development shall only be approved if it is first clearly demonstrated that the development will be served by an adequate, long-term public water supply.*

The ordinance amendment will allow commercial medical cannabis uses including manufacturing, storage/distribution, testing labs and retail dispensaries which are all uses that are currently allowed in the Coastal Industrial and Coastal Industrial Commercial Zones. The only new use allowed is cultivation and nurseries, which as analyzed in the Negative Declaration, could include a small potential increase in water demand. Based on approximately 22 acres within the Coastal Industrial and Coastal Industrial Commercial Zones it is estimated that the cultivation area would be less than one acre which would consume about 2.5 acre-feet of water per year. The City's current water supply is 2,207 acre feet of water per year (AFY). The City's current water demand is 1,200 AFY. Therefore, the ordinance would have a negligible effect on the City's current demand. The City has an adequate long-term water supply in place to serve the new uses.

*Policy 6.7.2.(4) Development shall only be approved if it is first clearly demonstrated that there is adequate, long-term public wastewater treatment capacity to serve such development.*

The ordinance amendment will allow commercial medical cannabis uses including manufacturing, storage/distribution, testing labs and retail dispensaries which are all uses that are currently allowed in the Coastal Industrial Zone. The City is a member of the South San Luis Obispo County Sanitation District (SSLOCSO) and is presently entitled to approximately 1.5 million gallons per day (MGD) of the treatment plant's 5 MGD average daily capacity. The city's estimated average flow rate in 2010 is 1.30 MGD, or about 87 percent of the City's allocated daily treatment capacity. Based on the negligible amount of additional water usage being primarily consumptive, wastewater discharge would remain constant. The City currently has excess demand of 0.20 MGD treatment capacity. Therefore, the City has adequate long-term wastewater treatment capacity in place to serve the new uses.

**WHEREAS**, the City Council of the City of Grover Beach makes the following findings consistent with Development Code Section 7.30.060 as follows:

1. The proposed amendment is consistent with the General Plan. The amendment is consistent with Land Use Element Goal LU-11 for industrial uses. The amendment is also internally consistent with all seven state mandated elements of the General Plan.

2. The proposed amendment is internally consistent with all other applicable provisions of the Development Code. The amendment requires all commercial medical cannabis uses comply with all applicable provisions of the Development Code.
3. The proposed amendment will not be detrimental to the public health, safety, or welfare of the City. The ordinance includes limitations on uses, minimum setbacks and numerous development standards to protect the public health, safety, and welfare. In addition, a regulatory ordinance will be adopted in Article III Chapter 18 that will establish additional operational and security requirements on all commercial medical cannabis uses. The ordinance also requires approval of a Use Permit and Commercial Cannabis Permit prior to operations. These discretionary permits allow for public comment on any proposed commercial medical cannabis use and require specific findings be made in the affirmative.

**NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF GROVER BEACH AS FOLLOWS:**

**SECTION 1.** Section 2.40.020 of Chapter 2 of Article IX, Purpose of the Industrial Zones, is amended as follows:

2.40.020 Purpose of the Industrial Zones

A. Industrial Zone (I). The Industrial Zone applies to areas of the City appropriate for light, medium and heavy manufacturing and assembly, industrial parks, warehouses, commercial cannabis uses, and similar and compatible uses. The area is also appropriate for smaller service businesses such as contractor's yards, vehicle repair and storage, and material sales and supplies. Live-work may be appropriate when compatible with surrounding uses.

B. Coastal Industrial Zone (CI). The Coastal Industrial Zone applies to areas of the City appropriate for light and medium manufacturing and assembly, industrial parks, warehouses, commercial cannabis uses, and similar and compatible uses. The area is also appropriate for smaller service businesses such as contractor's yards, vehicle repair and storage, and material sales and supplies. Live-work may be appropriate when compatible with surrounding uses. All development shall be consistent with the City's Local Coastal Program.

C. Coastal Industrial Commercial Zone (CIC). The Coastal Industrial Commercial Zone applies to the area adjacent to the Coastal Commercial Zone. The area is appropriate for technology businesses, custom and light manufacturing and assembly, commercial cannabis uses, and similar and compatible uses where all operations are conducted within the building. The area is also appropriate for office uses, live-work, recreational uses and similar and compatible uses. All development shall be consistent with the City's Local Coastal Program.

**SECTION 2.** Section 2.40.030 of Chapter 2, of Article IX, Industrial Zones Allowable Land Uses and Permit Requirements, is amended as follows:

**2.40.030 Industrial Zones Allowable Land Uses and Permit Requirements**

Table 2.6 Industrial Zones Allowable Land Uses and Permit Requirements				
Land Use	CI <sup>1</sup>	CIC <sup>1</sup>	I	Specific Use Regulations
<b>Industry, Manufacturing &amp; Processing</b>				
High Technology Uses	P	P	P	
Manufacturing, Artisan	P	P	P	Section 4.10.130
Manufacturing/Processing, Heavy	--	--	UP	Section 4.10.130
Manufacturing/Processing, Light	P	P	P	Section 4.10.130
Manufacturing/Processing, Medium	UP	--	UP	Section 4.10.130
Media Production	P	P	P	
<u>Commercial Cannabis Activity &amp; Uses</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>[Section 4.10.045]</u>
Printing and Publishing	P	P	P	
Recycling – Processing Facilities	--	--	UP	Section 4.10.150
Storage – Warehouse	P	P	P	
Storage – Outdoor	UP	--	UP	Section 4.10.130
Storage – Personal Storage Facility	P	--	P	Section 4.10.140
Storage - Vehicles	UP	--	UP	Section 4.10.130
Wholesaling & Distribution	P	P	P	
<b>Recreation, Education &amp; Public Assembly</b>				
Commercial Recreation Facility - Outdoor	UP	UP	UP	
Health/Fitness Facility	AUP	AUP	AUP	
Meeting Facility, public or private				
≤ 3,000 sf	AUP	AUP	AUP	
> 3,000 sf	UP	UP	UP	
Studio – Art, Dance, Martial Arts	AUP	AUP	AUP	
Public or Quasi-Public Facility	UP	UP	UP	
Specialized Education/Training	UP	UP	UP	
<b>Residential</b>				
Caretaker's Residence	AUP	AUP	AUP	Section 4.10.050
Home Occupation	P	--	P	Section 6.20.070
Live/work Unit	UP	UP	UP	Section 4.10.090
<b>Retail</b>				
Accessory Retail/Service Use	P	P	P	Section 4.10.020
Adult Business	UP	--	--	Section 4.20
Automobile Service Station	UP	--	UP	
Building/Landscape Materials, Indoor	P	--	P	
Building/Landscape Materials, Outdoor	UP	--	UP	Section 4.10.130
Fuel Dealer	UP	--	UP	
General Retail	P	P	P	
Plant Nursery	P	--	P	
Restaurant	UP	UP	UP	
Vehicle Sales	P	--	P	

Table 2.6 Industrial Zones Allowable Land Uses and Permit Requirements				
Land Use	CI <sup>1</sup>	CIC <sup>1</sup>	I	Specific Use Regulations
<b>Services</b>				
ATM	P	P	P	
Animal Boarding	AUP	--	AUP	
Animal Care Facilities	P	--	P	
Business Support Services	P	P	P	
Catering Service	P	P	P	
Equipment Rental	P	--	P	Section 4.10.130
Maintenance Service – Client Site Services	P	P	P	Section 4.10.130
Medical services – Clinic/Urgent Care	P	--	P	
Mortuary/Funeral Home	UP	--	UP	
Office – Business/Service	P	P	P	
Office – Processing	P	P	P	
Office – Professional	P	P	P	
Recycling – Large Collection Facilities	AUP	AUP	AUP	Section 4.10.150
Recycling – Reverse Vending Machine	P	P	P	Section 4.10.150
Recycling – Small Collection Facilities	P	P	P	Section 4.10.150
Repair Services – Large Equipment	P	--	P	Section 3.10.020
Repair Services – Small Equipment	P	P	P	
Vehicle Rental	P	--	P	
Vehicle Repair & Services	AUP	--	P	Section 4.10.130
<b>Transportation &amp; Infrastructure</b>				
Freight Terminal	--	--	UP	
Parking Facility	UP	UP	UP	
Telecommunication Facility	UP	UP	UP	Section 4.40
<b>End Note</b>				
1. Projects located in the Coastal Zone may require a Coastal Development Permit (See Section 6.20.040).				
<b>Legend</b>				
P Permitted Use				
AUP Administrative Use Permit Required				
UP Use Permit Required				
-- Use Not Allowed				

**SECTION 3.** Section 4.10.045 of Chapter 4, of Article IX, Commercial Cannabis Uses, is hereby added as follows:

4.10.045 Commercial Cannabis Activity and Uses

A. Purpose. This Section provides standards for Commercial Cannabis Uses, where allowed by Chapter 2 (Zones and Allowable Land Uses). These standards apply in addition to the regulatory requirements in Municipal Code Article III Chapter 18 and the State’s licensing requirements. Commercial Cannabis Uses shall include those uses licensed in Business and Professions Code section 19300.7 and defined in Public

Resource Code Section 19300.5 or as modified hereafter and Chapter 18 of Article III of the Grover Beach Municipal Code. No uses licensed under Chapter 5 of Division 10 of the California Business and Professions Code, specifically Section 26050 et seq. shall be allowed unless otherwise such restriction is precluded by the Control, Regulate and Tax Adult Use of Marijuana Act.

B. Review Authority. The Council is authorized to approve Use Permits for commercial cannabis uses. The Planning Commission shall make a recommendation to the Council.

C. Permit requirements. A Use Permit shall be approved by the Council to ensure compliance with this Section and a Coastal Development Permit shall be required when located in the Coastal Zone. Approval of a Use Permit does not allow the applicant to operate until a Commercial Cannabis Permit is approved in accordance with Municipal Code Article III Chapter 18.

D. Limitation on number of dispensaries. The maximum number of dispensaries is four.

E. Limitation on manufacturing uses. Level 1 and Level 2 manufacturing (State Licenses Types 6 and 7) shall be authorized subject to Municipal Code Article III Chapter 18.

F. Setbacks. Commercial Cannabis Uses shall comply with the following minimum setbacks:

1. All dispensaries shall be located a minimum of 100 feet from all residential zones as measured from the residential lot boundary to the public entrance of the dispensary, except no setback is required where a public street is located between the residential lot and the dispensary.
2. All dispensaries shall be located a minimum of 600 feet from public and private schools grades kindergarten through 12<sup>th</sup> grade.

G. Development standards. Commercial Cannabis Uses shall comply with the following standards:

1. All dispensaries may be open to the public and make and receive deliveries between the hours of 9:00 a.m. and 9:00 p.m. All other non-dispensary uses may operate at any time, but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.
2. Cultivation and nursery uses shall prepare a Water Recycling Management Plan that demonstrates that irrigation water is recycled to the maximum extent feasible using best management practices. A separate water meter shall be installed for irrigation uses.
3. All cultivation and nursery uses shall be within an enclosed building. Cultivation and nursery uses are prohibited outdoors.
4. Cultivation and nursery uses may use mixed-light buildings when issued a local license consistent with State licensing that allows for mixed-light buildings when no light is visible through the roof and windows of grow areas from dusk to dawn.
5. All delivery areas and loading/unloading areas shall be conducted within a secured area.
6. Odor control devices and techniques shall be incorporated to ensure that marijuana odors are not detectable from the property boundary and public right-of-way. In multi-tenant buildings marijuana odors shall not be detectable from the building exterior, or

from exterior and/or interior common areas such as walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. Odor control systems shall include, but are not limited to, ventilation and exhaust systems that provide sufficient odor absorbing to meet the above requirements.

7. Design standards in Section 2.40.050 and any other Council adopted design guidelines.
8. All applicable regulatory requirements of Municipal Code Article III Chapter 18.

**F. Required Findings.**

1. All Use Permit findings in Section 6.20.090
2. All Coastal Development Permit findings in Section 6.20.040, if applicable.

**SECTION 4.** Section 6.10.020 of Chapter 6, of Article IX, Permit Application Filing and Processing, is amended as follows:

Table 6.1 (Review Authority), below, identifies the Review Authority responsible for reviewing and making decisions on each type of development application required by this Development Code.

Table 6.1 Review Authority				
Type of Action	Code Section	Review Authority		
		Director	Commission	Council
General Plan Amendment	7.30	Recommend	Recommend	Decision
Local Coastal Program Amendment	7.30	Recommend	Recommend	Decision <sup>1</sup>
Development Code Amendment	7.30	Recommend	Recommend	Decision
Coastal Development Permit	6.20.040	Recommend <sup>2</sup>	Decision	Appeal
Development Permit	6.20.060	Recommend	Decision	Appeal
Use Permit	6.20.090	Recommend	Decision <sup>3</sup>	Appeal <sup>3</sup>
Variance	6.20.100	Recommend	Decision	Appeal
Administrative Development Permit	6.20.020	Decision	Appeal	Appeal
Administrative Use Permit	6.20.030	Decision	Appeal	Appeal
Home Occupation Permit	6.20.070	Decision	Appeal	Appeal
Temporary Use Permit	6.20.080	Decision	Appeal	Appeal
Interpretations	1.10.050	Decision	Appeal	Appeal
Note: 1. The decision by the City Council does not take effect until it is certified by the California Coastal Commission. 2. The Director may approve a Coastal Development Permit in compliance with Section 6.20.040. 3. The City Council shall be the Review Authority for Use Permits for Commercial Cannabis Uses.				

**SECTION 5.** Section 9.10.020 of Chapter 9, of Article IX Definitions is amended to add the following definition:

Commercial Cannabis Uses. The uses are solely limited to the cultivation, nursery, manufacturing, testing laboratories, transportation, delivery, distribution (includes storage), and

dispensaries as defined in Public Resources Code Section 19300.5 or as modified hereafter, and Municipal Code Article III Chapter 18.

**SECTION 6. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

**SECTION 7.** All ordinances and parts of ordinances in conflict with those sections amended or added herein are hereby repealed.

**SECTION 8. Effective Date.** Sections 1, 2, 3, 4, and 5 that are applicable to the Industrial Zone shall become effective and in full force and effect at 12:01 a.m. on the thirty first day after its final passage and Council approval and passage of the regulatory ordinance adopting Article III, Chapter 18. Within fifteen (15) days after its adoption by the City Council, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

**SECTION 9. Effective Date.** Sections 1, 2, 3, 4 and 5 that are applicable to the Coastal Industrial Zone **shall not become effective until final certification by the California Coastal Commission** and Council approval and passage of the regulatory ordinance adopting Article III, Chapter 18. However, within fifteen (15) days after adoption by the City Council, the Ordinance shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

**INTRODUCED** at a regular meeting of the City Council held \_\_\_\_\_, and **PASSED, APPROVED, and ADOPTED** by the City Council on \_\_\_\_\_, on the following roll call vote, to wit:

AYES:	Council Members –
NOES:	Council Members –
ABSENT:	Council Members –
ABSTAIN:	Council Members –

\_\_\_\_\_  
JOHN P. SHOALS, MAYOR

Attest:

\_\_\_\_\_  
DONNA L. McMAHON, CITY CLERK

Approved as to Form:

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DAVID P. HALE, CITY ATTORNEY