



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** December 4, 2017

FROM: Matthew Bronson, City Manager

PREPARED BY: Bruce Buckingham, Community Development Director
David Hale, City Attorney
John Peters, Police Chief
Steve Lieberman, Five Cities Fire Chief

SUBJECT: Introduction and First Reading of Ordinances to Amend Articles IX and III of the Grover Beach Municipal Code and Approve a Local Coastal Program Amendment Regarding the Establishment, Operation, and Regulation of Commercial Medical Cannabis Uses

RECOMMENDATION

- 1) Conduct first reading, by title only, and introduce the Ordinance amending Article IX of the Grover Beach Municipal Code to increase the maximum number of medical cannabis retail uses to four and make revisions consistent with State law; and
 - 2) Conduct first reading, by title only, and introduce the Ordinance amending Article III Chapter 18 of the Grover Beach Municipal Code (Medical Cannabis Regulatory Ordinance) to revise definitions and make revisions consistent with State law; and
 - 3) Schedule second reading and adoption of the Ordinances and adoption of a Resolution approving a Local Coastal Program Amendment at the next regularly scheduled City Council meeting.
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BACKGROUND

In May 2017, the City Council adopted two ordinances to allow commercial medical cannabis uses in the city. The land use ordinance established requirements that allow medical cannabis uses, including cultivation, manufacturing, distribution, testing laboratories and up to two dispensaries subject to approval of a Use Permit. The regulatory ordinance established the regulatory framework for those uses subject to approval of a Commercial Cannabis Permit.

At the October 16, 2017 Council meeting, the Council provided direction for staff to draft revisions to both the land use and regulatory ordinances for Council consideration as discussed below.

State and Local Licensing

In order to operate, commercial medical cannabis uses would require approval of a two-step process at the local level in addition to State licensing. First, an applicant would require approval of a Use Permit by the City Council that would establish the location, size and types of uses allowed. Second, the applicant would require approval of a Commercial Cannabis Permit by the City Council to assure that all regulatory requirements are met.

On a statewide level, the State passed five laws (AB 266, AB 243, SB 643, AB 21 and SB 837) that took effect in 2016 collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA). In November 2016, the passage of Proposition 64 legalized use of recreational marijuana in California and established a structure for regulating these uses. In June 2017, the State essentially repealed MCRSA and replaced it with the Medicinal and Adult-Use Cannabis

Regulation and Safety Act (MAUCRSA or SB 94), which made revisions and consolidated the regulations for both medical and adult cannabis uses. In September 2017, AB 133 made further refinements to MAUCRSA. These laws establish the current regulatory and licensing structure for the cannabis industry.

The State is scheduled to begin accepting license applications in January 2018 for cannabis uses and will also require a local permit be approved, if the local agency adopts an ordinance allowing for commercial cannabis uses. However, cities cannot consider approving local licenses until January 2018 for adult uses. Once both the City's and State's licensing processes are established, any cannabis business operating in the City will also be required to obtain a license from the State. Failure to obtain the State license would be grounds for revoking the City's permit.

Land Use Ordinance Amendment

Based on the direction from the Council at its October 16, 2017 meeting, staff has prepared an amendment to the commercial medical cannabis land use ordinance for Council consideration. The amendment would increase the number of retailers and/or microbusinesses with a retail use from two to "up to four". However, the Council is not obligated to issue four permits and could elect to phase the approvals over a specified timeframe.

The amendment includes the new terminology of "retailers" and "microbusinesses" which reflect the two new State license types that allow for retail sales previously referred to as "dispensaries". The definitions of "retailers" (State license Type 10) and "microbusinesses" (State license Type 12) have been added to the regulatory ordinance (reference Attachment 3, Part 2 amending Section 4000.20 of Chapter 18). It should be noted that microbusinesses may allow for a combination of cultivation, manufacturing, distribution, and retail use; however, there is no requirement for a retail use. Therefore, a microbusiness may or may not have a retail use. For purposes of this staff report, when the term "retail use" is used it includes both "retailers" and/or "microbusinesses" with a retail use since these are the two State licenses that allow retail sales of cannabis.

In addition, the amendment proposes several changes to the ordinance in order to comply with recent revisions to State law as a result of adopting SB 94 and AB 133 known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) as follows:

- Revise Section 4.10.045.A to delete references to Business and Professional Code sections 19300.5 and 19300.7 and to any references to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.
- Revise the enabling statutory references to those newly established and amended statutes in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and update the ordinance consistent with the new regulations.
- Revise the "Whereas" provisions of the ordinance to address the newly adopted Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

The Council also provided direction for staff to consider comments A, B, and C provided in a letter to the Council by Todd Mitchell dated October 16, 2017 (reference Attachment 4). Comment A indicates that the City's ordinances related to allowing manufacturing with volatile compounds (State license Type 7 Manufacturing 2) exceeds mandates in State law. The State law allows local jurisdictions to allow or prohibit any or all commercial cannabis uses. As indicated in the Council-adopted land use and regulatory ordinances, manufacturing with volatile compounds is allowed but the Council elected to limit the use to ethanol only. Further, the Council also elected to adopt by resolution Fire and Life Safety Requirements that impose additional safety requirements for cannabis manufacturing uses. Both of these actions are consistent with State law which allow for local jurisdictions to prohibit any or all commercial cannabis uses and regulate then as they determine is necessary.

Comment B references State law regarding distribution uses. The Council adopted ordinances allow distribution or delivery uses and is consistent with State law.

Comment C references State law regarding retail uses (Business and Professions Code Section 26070). The State's definition of "retailer" (previously referred to in prior state legislation as a dispensary) is:

"Retailer," for the retail sale and delivery of cannabis or cannabis products to customers. A retailer shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted. A retailer's premises may be closed to the public. A retailer may conduct sales exclusively by delivery.

The current City ordinances allow a maximum of two retail uses, which are now proposed to be increased to up to four. The ordinance would allow either a physical location open to the public (which can also make deliveries), or a physical location that is closed to the public and exclusively makes sales by delivery. The proposed ordinance has added language in Section 4.10.045.F to clarify that the Council may approve either type of retail use. However, it should be noted that all seven of the Pre-Applications for retail uses deemed eligible by the Council all assumed businesses that would be open to the public. It is solely up to the Council whether it wants to consider a retail use that would not be open to the public and make sales exclusively by delivery.

In summary, the proposed medical cannabis land use ordinance amendment is solely focused on increasing the number of retail uses to four and making revisions to be consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The proposed ordinance does not propose revisions to any of the following:

- The three industrial zones that allow for commercial medical cannabis uses.
- The requirements for a Use Permit and Commercial Cannabis Permit.
- Development standards such as hours of operation, water recycling, security plans and odor control.
- Minimum setbacks for schools or residential zones.

It should be noted that MAUCRSA includes a minimum 600 foot setback from youth centers unless the local jurisdiction specifically establishes a different setback. When the Council adopted the ordinances in May 2017, the Council specifically decided not to include a minimum setback for youth centers. While the Council could consider additional amendments to the ordinance (other than currently proposed) at this time, the amendment could require additional environmental review and/or the requirement for the Planning Commission to review depending on the type of amendment.

Planning Commission Recommendation

On November 8, 2017, the Planning Commission reviewed the draft land use ordinance amendment and recommended on a 3-0 vote (Commissioner Rodman absent) that the Council approve the ordinance amendment and Local Coastal Program Amendment. The Commission also recommended the Council consider allowing retail uses with a physical location in the City that would not be open to the public and make all sales exclusively by delivery (reference Attachment 2). The Commission did not make a specific recommendation on the number of retail uses that would exclusively make deliveries. Therefore, staff is providing the Council the following options in allowing retail uses that would not be open to the public:

- Allow four retail uses to be open to the public and one or more additional retail uses that would not be open to the public; or

- Allow a total of four retail uses with two open to the public and two delivery only, with the option of allowing the two delivery only retail uses to be open to the public at some future date (i.e., phased approach); or
- Allow a total of four retail uses with two open to the public and two delivery only.

Local Coastal Program Amendment

The ordinance would amend Chapters 4 and 9 of the Development Code (Article IX of the Municipal Code). Development Code Section 1.20.060 identifies all chapters and sections that constitute the ordinances for the implementation of the City's Local Coastal Program (LCP) in compliance with the California Coastal Act. Therefore, any amendment to Chapter 4 or Chapter 9 of the Development Code requires a LCP Amendment. An LCP Amendment requires the Coastal Commission's approval prior to the ordinance taking effect.

Staff has reviewed the proposed LCP Amendment with the policies in Chapter 3 of the Coastal Act and has determined that the ordinance would have no effect on public access, recreation, environmentally sensitive habitat areas, or other coastal resources. The Coastal Industrial and Coastal Industrial Commercial Zones are isolated from the beach and direct access is prevented by the railroad tracks. The proposed ordinance increases the number of retailers and/or microbusinesses with a retail use which are currently allowed in the Coastal Industrial (CI) and Coastal Industrial Commercial (CIC) Zones and would not change the kind, location, intensity, or density of the uses. The ordinance is consistent with the existing policies of the LCP that allow retail uses in the Coastal Industrial (CI) and Coastal Industrial Commercial (CIC) Zones and is internally consistent with the current Development Code.

Staff has contacted Coastal Commission staff regarding the proposed LCP Amendment and they have not expressed any concerns regarding the proposed amendment. Upon final adoption of the ordinance by the Council, staff would forward the LCP Amendment to the Coastal Commission for review. Coastal Commission staff estimates it will take approximately two months for formal approval by the Coastal Commission upon final action by the Council. The LCP Amendment is considered a "minor" amendment because it is consistent with the existing LCP and the revisions are more specific and which do not change the kind, location, intensity or density of use.

Regulatory Ordinance

Based on the direction from the Council at its October 16, 2017 meeting, staff has prepared amendments to the commercial medical cannabis regulatory ordinance (reference Attachment 2) which is summarized as follows:

- Updated "WHEREAS" provisions to be consistent with recently revised State law;
- Deleted the term Dispensary which has been changed by State law to Retailers and Microbusinesses;
- The definition of Applicant in Section 4000.20 was deleted and included in the definition of Owner;
- The ordinance clarifies the term Commercial Cannabis Activity by referring to the state licensing process for medical cannabis and adding a sentence that states the only allowable uses in the City are medical;
- On a global basis, the ordinance was updated to reference the Medicinal and Adult-Use Cannabis Regulation and Safety Act;
- The definition of "Good Cause" was expanded to allow Council greater flexibility in both disqualifying an applicant and in the rating process when there is a limited number of permits;
- The definitions of "Retailer" and "Microbusiness" were added;

- A definition of the process or Rating Applicants was added since State law does not clearly define that process;
- The crimes that can be considered was expanded and misdemeanor violations were included for Council consideration for disqualification and the rating process;
- The ordinance was updated in numerous provisions to eliminate inconsistencies between the newly adopted SB 94 and current language.

Environmental Review

The City contracted with Rincon Consultants to prepare an Initial Study for the land use and regulatory ordinances as part of initial ordinances considered by the Council in May 2017, which evaluated up to four retailers and/or microbusinesses. The Initial Study concluded that there were no potentially significant environmental impacts and a Negative Declaration was adopted by the Council in May 2017.

FISCAL IMPACT

Staff has previously estimated the amount of annual revenue generated by the City's commercial cannabis tax to range from \$1,000,000 to \$2,000,000 over time as commercial cannabis businesses are established. The 2017-18 budget assumes an initial estimate of \$200,000 in revenue this year as the first businesses begin operating this fiscal year. These estimates will be updated once permits are issued and there is greater clarity on the timing and scope of commercial medical cannabis business that are allowed to establish. The 2017-18 budget also included approximately \$200,000 in costs associated with regulating commercial medical cannabis businesses with revenue from permit and application fees offsetting these costs. Staff will return to the Council in early 2018 with a recommended annual permit fee structure in conjunction with the 2018-19 budget development process.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Conduct first reading, by title only, and introduce the Ordinance amending Article IX of the Grover Beach Municipal Code to increase the maximum number of medical cannabis retail uses to four and make revisions consistent with State law; and
2. Conduct first reading, by title only, and introduce the Ordinance amending Article III Chapter 18 of the Grover Beach Municipal Code (Medical Cannabis Regulatory Ordinance) to revise definitions and make revisions consistent with State law; and
3. Schedule second reading and adoption of the Ordinances and adoption of a Resolution approving a Local Coastal Program Amendment at the next regularly scheduled City Council meeting; or
4. Provide alternative direction to staff.

PUBLIC NOTIFICATION

On Friday, November 24, 2017, the public hearing notice was published in *The Tribune* and mailed on Wednesday, November 22, 2017 to all property owners and occupants located within the three industrial zones and within 300 feet. The agenda was posted in accordance with the Brown Act. The seven qualified retail use applicants and interested parties were sent a copy of the staff report and meeting agenda.

ATTACHMENTS

1. Draft Land Use Ordinance
2. Draft Regulatory Ordinance
3. Draft Planning Commission Meeting Minutes
4. Letter to City Council from Todd Mitchell, Dated October 16, 2017

ORDINANCE NO. 17-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH REPEALING AND REPLACING SUBSECTION A OF SECTION 4.10.045 OF CHAPTER 4, OF ARTICLE IX AND AMENDING SUBSECTION D AND F AND SUBDIVISION 1 OF SUBSECTION G OF SECTION 4.10.045 OF CHAPTER 4, OF ARTICLE IX AND SECTION 9.10.020 OF CHAPTER 9, OF ARTICLE IX TO INCREASE THE NUMBER OF RETAIL USES TO UP TO FOUR AND MAKE REVISIONS CONSISTENT WITH RECENT STATE LAW CHANGES

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 Planning Commission held a public hearing on November 8, 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 cannabis 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, In 2015, California enacted three bills – Assembly Bill 243; Assembly Bill 266; and Senate bill 643 – that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sales, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

WHEREAS, In November, 2016, Proposition 64 was enacted and entitled “The Adult Use of Marijuana Act” (“AUMA”) (codified as amendments to California Health and Safety Code, Business and Professions Code, Revenue and Taxation Code and Food and Agricultural Code). The intent of Proposition 64 being to establish a comprehensive system to decriminalize, control and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana, as well as other marijuana related activities; and

WHEREAS, June 27, 2017, the State Legislature adopted the State Budget along with a number of trailer bills including Senate Bill no. 94 which enacted “The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA. Under this bill, these consolidated provisions make up the MAUCRSA and includes the regulations for both medical and nonmedical cannabis uses; and

WHEREAS, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 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.4th 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, with limited exceptions, neither the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical Cannabis Regulation and Safety Act (MCRSA), the Adult Use of Marijuana Act (AUMA) or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) 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 Medicinal and Adult-Use Cannabis Regulation and Safety Act, 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, this text amendment to the existing ordinance 17-05 fails to create any environmental impacts not already reviewed in the Negative Declaration prepared for ordinance 17-05 as part of Development Application 16-35 and is in conformance with the California Environmental Quality Act whereas Council has concluded the Development Code amendment would not have a significant impact on the environment.

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

PART 1. Subsection A of Section 4.10.045 of Chapter 4, of Article IX, Commercial Cannabis Uses, is hereby repealed in total and replaced 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 allowed by the City shall include those uses licensed in Business and Professions Code sections 26050, 26061 and 26070 and as modified and restricted within this Chapter 2 and in Chapter 18 of Article III of the Grover Beach Municipal Code. With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician’s recommendation, all Use Permits and Commercial Cannabis Permits issued by the City shall be only for medical cannabis purposes and be consistent with the State’s issuance of a “M” licenses designation consistent with Business and Professions Code Section 26050 (b).

PART 2. Subsection D of Section 4.10.045 of Chapter 4, of Article IX, Commercial Cannabis Uses, is hereby amended as follows:

D. Limitation on number of ~~dispensaries~~ **Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only.** The aggregate maximum number of ~~dispensaries~~ **Retailers and/or Microbusinesses with a retailer use allowed are up to four** is ~~two~~.

PART 3. Subsection F of Section 4.10.045 of Chapter 4, of Article IX, Commercial Cannabis Uses, is hereby amended as follows:

- F. Setbacks. Commercial Cannabis Uses shall comply with the following minimum setbacks:
1. All ~~dispensaries~~ Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only, 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 facility~~, except on Farroll Road where no minimum setback is required from residential zones.
 2. All ~~dispensaries and cultivation with storefronts~~ Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only, shall be located a minimum of 600 feet from public and private schools grades kindergarten through 12th grade consistent with State law.
 3. All commercial cannabis uses shall be located a minimum of 100 feet from the CR2 Zone on the north side of Atlantic City Avenue as measured from the residential lot boundary to the industrial lot boundary.
 4. All commercial cannabis uses not otherwise subject to the setback requirements of this Subsection, shall not be subject to any additional setback requirements other than contained in Section 2.40.040.

PART 4. Subdivision 1 of Subsection G of Section 4.10.045 of Chapter 4, of Article IX, Commercial Cannabis Uses, is hereby amended as follows:

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

1. All ~~dispensaries~~ Retailers and/or Microbusinesses with a retailer use, whether open to the public or delivery only, may be open to the public between the hours of 9:00 a.m. and 7:00 p.m. and make and receive deliveries between the hours of 9:00 a.m. and 9:00 p.m. All other non-~~dispensary~~ retailer uses may operate at any time, but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.

PART 5. Section 9.10.020 of Chapter 9, of Article IX Definitions is hereby amended as follows:

Commercial Cannabis Uses. The uses are solely limited to ~~the~~ commercial medical cultivation, nursery, manufacturing, testing laboratories, transportation, ~~delivery~~, distribution (includes storage), microbusiness, and retailer dispensaries as defined in ~~Public Resources Code Section 493005~~ Business and Professions Code Sections 26050, 26061 and 26070 or as modified and restricted hereinafter, and in Municipal Code Article III, Chapter 18.

PART 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.

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

PART 8. Effective Date. This Ordinance shall not become effective and in full force and effect until 12:01 a.m. on the thirty first day after its final passage and final certification by the California Coastal Commission. 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 on December 4, 2017 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 -
RECUSED: Council Members -

**** D R A F T ****

JOHN P. SHOALS, MAYOR

Attest:

DONNA L. McMAHON, CITY CLERK

Approved as to Form:

DAVID P. HALE, CITY ATTORNEY

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH AMENDING CHAPTER 18, ARTICLE III OF THE GROVER BEACH MUNICIPAL CODE AMENDING SUBSECTION (A) OF SECTION 4000.10, SECTION 4000.20, SUBDIVISION (4) OF SUBSECTION (A) OF SECTION 4000.50, SECTION 4000.160, SECTION 4000.170, SECTION 4000.190, SUBSECTION (D) OF SECTION 4000.210, SUBSECTION (C) OF SECTION 4000.220, SUBSECTIONS (A) AND (B) OF SECTION 4000.230 AND SECTION 4000.240 TO REVISE DEFINITIONS AND MAKE REVISIONS CONSISTENT WITH RECENT STATE LAW CHANGES

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, businesses and property lie within the City's police power; 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 cannabis for medicinal purposes or otherwise; 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, in 2015, California enacted three bills – Assembly Bill 243; Assembly Bill 266; and Senate bill 643 – that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sales, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

WHEREAS, In November, 2016, Proposition 64 was enacted and entitled “The Adult Use of Marijuana Act” (“AUMA”) (codified as amendments to California Health and Safety Code, Business and Professions Code, Revenue and Taxation Code and Food and Agricultural Code). The intent of Proposition 64 being to establish a comprehensive system to decriminalize, control and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana, as well as other marijuana related activities; and

WHEREAS, June 27, 2017, the State Legislature adopted the State Budget along with a number of trailer bills including Senate Bill no. 94 which enacted “The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA. Under this bill, these consolidated provisions make up the MAUCRSA and includes the regulations for both medical and nonmedical cannabis uses; and

WHEREAS, Sections 26054 and 26200 of the California Business and Professions Code establishes regulations for setback requirements for Commercial Cannabis Activity consistent with local regulations and again affirming that counties and cities can under state law adopt ordinances that control, restrict or ban the location and establishment of any Commercial Cannabis Activity licensed under MAUCRSA; and

WHEREAS, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 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.4th 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, with limited exceptions, neither the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical Cannabis Regulation and Safety Act (MCRSA), the Adult Use of Marijuana Act (AUMA) or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) 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 Medicinal and Adult-Use Cannabis Regulation and Safety Act, 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, 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, this text amendment to the existing ordinance 17-06 fails to create any environmental impacts not already reviewed in the Negative Declaration prepared for ordinance 17-06 as part of Development Application 16-35 and is in conformance with the California Environmental Quality Act whereas Council has concluded this text amendment would not have a significant impact on the environment.

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

PART 1. Subsection A of Section 4000.10 of Chapter 18, Article III of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

(A) It is the primary purpose and intent of this Chapter to accommodate the needs of medically-ill Persons in need of marijuana for medical purposes while imposing regulations on the use of land to protect City of Grover Beach's neighborhoods, residents, and businesses from negative impacts. It is a further purpose and intent of this Chapter to regulate the cultivation, nursery, manufacturing, testing laboratories, transportation, delivery, distribution (includes storage) retailers and microbusinesses dispensaries of cannabis and cannabis-related products in a manner which is responsible and which protects the health, safety, and welfare of the residents of the City of Grover Beach; to enforce rules and regulations consistent with State law. In part to meet these objectives, an annual permit shall be required to own and to operate a Commercial Cannabis Business within the City of Grover Beach as authorized under this ordinance and within the City of Grover Beach Development Code. Nothing in this Chapter is intended to authorize the cultivation, possession or use of marijuana for any non-medical purpose consisting of either commercial or personal use other than as authorized within this ordinance or wherein the Adult Use of Marijuana Act otherwise preempts local agency regulations.

PART 2. Section 4000.20 of Chapter 18, Article III of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

When used in this Chapter, the following words shall have the meanings ascribed to them in this section. Any reference to California statutes includes any regulations established thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

(A) “Accrediting body” means a nonprofit organization that requires conformation to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperative Mutual Recognition Arrangement for Testing.

(B) “Applicant” for purposes of this ordinance means an Owner applying for a local Commercial Cannabis Permit, the following:

~~_____ (1) Owner or owners of a proposed facility, including all Persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.~~

~~_____ (2) If the owner is an entity, “owner” includes within the entity each Person participating in the direction, control, or management of, or having a financial interest in the proposed facility.~~

~~_____ (3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any Person or entity with an aggregate ownership interest of 5 percent or more.~~

(C) “Cannabis” means all parts of the 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 marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “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, manufacturing, 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. For the purpose of this Chapter, “Cannabis” does not mean industrial hemp as that term is defined in Section 11018.5 of the California Health and Safety Code.

(D) “Cannabis concentrate” means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

(E) “Certificate of Accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state and permitted by the City.

(F) “Commercial Cannabis Activity” or “Commercial Cannabis Use” include cultivation, nursery, possession, manufacture (Level one and two), processing, storing, laboratory testing, labeling, ~~dispensaries~~ retailers and microbusinesses including wholesale and retail sale of medical cannabis or a medical cannabis products, distribution, transportation and approved licenses enumerated and defined within Division 10, Chapter 1 (commencing with Section 26000) Chapter 3.5, of Division 8 of the California Business and Professions Code, and ultimately issued a “M-Type” license consistent with Section 26050 (b), of the California Business and Professions Code, sections 19300 et seq., as amended. For purposes of this definition, all authorized uses shall be for commercial medical cannabis uses only unless preempted by state law.

(G) “Commercial Cannabis Business” means any business or operation which engages in Commercial Cannabis Activity.

(H) “Commercial Cannabis Permit or Permit” means a permit issued by the City of Grover Beach pursuant to this Chapter to a Commercial Cannabis Business that authorizes a Person to conduct Commercial Cannabis Activity within the City.

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

(J) “Cultivation site” means a facility where medical cannabis is propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) ~~Medical Marijuana Regulation and Safety Act~~.

(K) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a retailer or microbusiness with a retailer use dispensary, up to an amount determined by the State of California, or any of its departments or divisions, to a primary caregiver or qualified patient, or a testing laboratory. “Delivery” also includes the use by a retailer or microbusiness with a retailer use dispensary of any technology platform owned and controlled by the retailer or microbusiness dispensary, or independently licensed by the State of California under the Medicinal and Adult-Use Cannabis Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act~~ (as the same may be amended from time-to-time), that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed retailer or microbusiness dispensary of medical cannabis or medical cannabis products.

~~(L) “Dispensary” means a facility where cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Section 19340, of the California Business and Professions Code, medical cannabis and medical cannabis products as part of a retail sale.~~

~~(LM) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary licensed retailer (State license Type 10) or a microbusiness with a retail use. (State license type 12).~~

~~(MN) “Distribution” means the procurement, sale, and transport of medical cannabis or medical cannabis products between entities licensed pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act~~ ~~Medical Cannabis Regulation and Safety Act~~ or as amended.

~~(NO) “Distributor” means a Person licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act~~ ~~Medical Cannabis Regulation and Safety Act~~ to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a license manufacturer, for sale to a licensed retailer or microbusiness dispensary.

~~(OP) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.~~

~~(PQ) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible medical cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.~~

(QR) “Good Cause” for purposes of refusing or denying an initial application for a Commercial Cannabis Permit, for revoking a Commercial Cannabis Permit, or for refusing or denying renewal or reinstatement of a Permit, or for Rating Applicants for purposes of issuance of a Permit means:

- (1) The Applicant has violated any of the terms, conditions or provisions of this Chapter, of State Law, or any regulations and rules established pursuant to State Law, any applicable rules and regulations, or any special terms or conditions placed upon its Use Permit, State License or Local Permit;
- (2) Failure to provide information required by the City of Grover Beach;
- (3) The Permitted Premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located;
- (4) The Applicant has knowingly made false or misleading statements, misrepresentations or material omissions as part of an interview process, on an application form to request issuance of a Permit or renewal form, or any other document submitted to the City;
- (5) The Commercial Cannabis Business is not created, organized or operated in strict compliance with all applicable laws and regulations;
- (6) The Applicant fails to meet the requirements of this Chapter, or the conditions of the Use Permit;
- (7) The operation of the proposed Commercial Cannabis Business at the proposed location is prohibited by a state or local law or regulation;
- (8) The Council has found consistent with Section 4000.160 that the Applicant’s criminal history reflects a conviction of an offense that is substantially related to the qualifications, functions or duties of the business or profession for which the application is made and has found the Applicant is not suitable for issuance of a Permit;
- (9) The Applicant was found, to have a felony or misdemeanor conviction involving fraud, deceit, embezzlement, dishonesty, violent behavior, moral turpitude or committed crimes serving as a basis for denial of a Permit consistent with Section 4000.160. A conviction within the meaning of this section means a plea or a guilty verdict, a conviction or diversion following a plea of nolo contendere or a conviction later expunged by the court;
- (10) The Applicant was found to have a felony or misdemeanor conviction for hiring, employing, or using a minor in transportation, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
- (11) The Applicant was found to have a felony or misdemeanor conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety code.
- (12) The Applicant is employing or being financed in whole or in part by any Person whose criminal history indicates that Person would not be issued a Permit consistent with Section 4000.160 of this Chapter;
- (13) The Applicant or his/her employees fails to allow inspection of the business facilities, security recordings, activity logs, or business records of the Permitted Premise by City Officials;
- (14) The Applicant’s business is owned by, or has an officer or director who is a licensed physician making recommendations for Medical Cannabis;

- (15) The Applicant has had a local Permit or State Cannabis License revoked or has had more than one suspension on its local Permit by the City; or
- (16) The Applicant operated a Commercial Cannabis Business in violation of Section 4000.40 of this Chapter;
- (17) The Applicant or the operator listed in the application is less than twenty-one (21) years of age.

(~~RS~~) “Greenhouse” means a structure with walls and roof made primarily of transparent material, such as glass, in which plants requiring regulated climatic conditions are grown.

(~~ST~~) “License” means the issuing of a license by the State of California, or one of its departments or divisions, under the Medicinal and Adult-Use Cannabis Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act~~ to engage in Commercial Cannabis Activity. License shall not consist of any uses for non-medical marijuana that ~~is licensed~~ is subject to licensing by the State consistent with the California Business and Professions Code Section 26050, et. seq.

(~~TU~~) “Live plants” means living medical cannabis flowers and plants, including seeds, sprouts, immature plants (including unrooted clones), and vegetative stage plants.

(~~UV~~) “Manufacturer” means a Person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as defined in this section, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to the Medicinal Adult-Use Cannabis Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act~~.

(~~VW~~) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate or manufactured product intended for internal consumption or topical application.

(~~WX~~) “Manufacturing site” means a location that produces, prepares, propagates, or compounds medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a Person issued a license by the State of California, or one of its departments or divisions, for these activities.

(~~XY~~) “Medical cannabis”, “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code (as the same may be amended from time-to-time). For purposes of this Chapter, “medical cannabis” does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(Y) “Microbusiness” (State license Type 12) shall mean a use for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer under state and local law, or any combination of uses listed herein provided such licensee can demonstrate compliance with all requirements imposed by the Medicinal and Adult-Use Cannabis Regulation and Safety Act on licensed cultivators, distributors Level 1 manufacturers, and retailers to the extent the licensee engages in such activities.

(Z) “Mixed-Light Building” shall mean the cultivation of cannabis using light deprivation and/or artificial lighting below a rate of 25 watts per square foot.

(AA) “Moral Turpitude,” crimes are defined as acts of baseness, vileness or depravity in the private and social duties, they are contrary to the accepted and customary rule of moral, right and duty between people. Crimes involving moral turpitude ~~request~~ require the criminal intent of the offender to cause great bodily injury, defraud, deceive, deprive an owner of property, or to act in a lewd manner or recklessness.

(BB) “Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(CCBB) “Owner” means any of the following:

(1) Owner or owners of a proposed facility, includes all Persons or entities having ownership interest of 5 percent or more, other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) ‘If the owner is an entity, “owner” includes within the entity each Person participating in the direction, control, or management of, or having a financial interest in the proposed facility.

(3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any Person or entity with an aggregate ownership interest of 5 percent or more.

(DDCC) “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(EE) “Rating” means a process wherein the City Council or other delegated City official or officials consider numerous applications for a Commercial Cannabis Permit that are greater than the number of permits allocated or authorized by ordinance. The City will implement a process as established by Council or the City Manager wherein they rate the applicants based upon information submitted by the applicant, criminal history defined as a component of Good Cause, and oral interviews. Staff will rate the applicants and submit recommendations to Council for consideration. Council may use their sole discretion in using the information submitted by staff or other factors in considering issuance of permits when the applications are greater in number than the number of allowable permits by ordinance. Wherein a total number of Commercial Cannabis Permits are established by ordinance, nothing in this section nor in Section 4.10.045 of the Grover Beach Municipal Code obligates the Council to issue the total number of authorized permits. Council at their discretion may issue any number of permits up to the maximum number of permits authorized by ordinance.

(FF) “Retailer” (State license Type 10) means a use for the retail sale and delivery of medical cannabis or cannabis products to customers. This use is for operations within a fixed location and may consist of a facility open to the general public or may be for delivery only.

(GGDD) “Stacking” means the practice of growing marijuana plants on platforms or tables and stacking them in multiple layers on top of each other.

(~~FFEE~~) “State License” or “license” means a state license issued pursuant to the Medical Cannabis Regulation and Safety Act.

(~~GGFF~~) “Testing Laboratory” means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Holds a valid Certificate of Accreditation by an Accrediting Body that is independent from all other Persons involved in the medical cannabis industry in the state.
- (2) Registered with the State Department of Public Health.

(~~HHGG~~) “Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

(~~IJHH~~) “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting Commercial Cannabis Activity authorized by the Medicinal and Adult-Use Cannabis Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act~~.

(~~JJH~~) “Transporter” means a Person issued a state license by the State of California, or one of its departments or divisions, to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the State of California, or one of its departments or divisions, that have been issued a State license pursuant to the Medicinal and Adult-Use Regulation and Safety Act ~~Medical Cannabis Regulation and Safety Act~~.

PART 3. Subdivision (4) of Subsection (A) of Section 4000.50 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

- (4) Except for live growing plants which are being cultivated at a cultivation facility, all medical cannabis and medical cannabis products shall be stored in a secured and locked room, safe, or vault, except for limited amounts of cannabis used for display purposes or immediate sale at a retailer or microbusiness with a retail use dispensary. All medical cannabis and medical cannabis products, including live plants which are being cultivated, shall be kept in a manner as to prevent diversion, theft, and loss.

PART 4. Section 4000.160 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

Permittee Selection Process; Criteria for Review; Renewal, Suspension, or Revocation of a Permit: In addition to those requirements set forth in this section and elsewhere in this Chapter, the City Council shall by resolution or ordinance adopt such forms, fees, and procedures as are necessary to implement this Chapter with respect to the initial selection, future selection, investigation process, renewal, rating of applicants, revocation, and suspension of Commercial Cannabis Permits.

(A) At a minimum, the application shall contain the following requirements:

- (1) The printed full name, signature, date of birth and present address and telephone number of all Persons and entities responsible for the operation of the Commercial

Cannabis Business including managers, corporate officers, investors, any Person with an ownership interest, any member of a board of directors, any general or limited partner, and/or any member of a decision-making body for the Commercial Cannabis Business.

- (2) The address to which correspondence from the City of Grover Beach is to be sent.
- (3) The names and addresses of all businesses operated by and the employment of the applicant(s) for the five (5) years immediately preceding the date of the application.
- (4) Any litigation in which the applicant(s) has been involved within the five (5) years immediately preceding the date of the application and a statement of whether any business currently operated by the applicant(s) or operated by the applicant(s) within the five (5) years immediately preceding the date of the application has been investigated or the permit or license authorizing the operation of such business has been revoked or suspended within the five (5) years immediately preceding the date of the application.
- (5) The address of any Commercial Cannabis Business currently being operated by the applicant(s), or any of them, or which have been previously operated by them within the last five (5) years.
- (6) The supply sources for all cannabis and cannabis products sold at the Commercial Cannabis Business. Product supply chain including the site(s) where cultivation occurs, the product is processed or manufactured, any required testing of cannabis or cannabis products, transportation, and packaging and labelling criteria.
- (7) The names and telephone numbers of the Person(s) to be regularly engaged in the operation of the proposed Commercial Cannabis Business, whether an employee, volunteer or contractor. The application shall also have the names and telephone numbers of those Persons having management and supervisory responsibilities for the proposed Commercial Cannabis Business.
- (8) Odor control devices and techniques to prevent odors from marijuana from being detectable off-site.
- (9) Procedures for identifying, managing, and disposing of contaminated, adulterated, deteriorated or excess medical cannabis product.
- (10) Procedures for inventory control to prevent diversion of cannabis and cannabis product, employee screening, storage of cannabis and cannabis product, personnel policies, and record-keeping procedures.
- (11) A detail of the procedures to be utilized at the facility including a description of how chemicals and fertilizers will be stored, handled, used and disposed of; manufacturing methods, the transportation process, inventory procedures, and quality control procedures.
- (12) A site plan and floor plan of the Commercial Cannabis Business denoting the property lines and the layout of all areas of the Commercial Cannabis Business including storage, cultivation, manufacturing, testing, distributing, reception/waiting, and all ancillary support spaces, and the relationship of the facility to adjacent properties and land uses.
- (13) An operations and security plan in conformance with Section 4000.50.
- (14) Standard operating procedures detailing how operations will comply with state and local regulations, how safety and quality of products will be ensured, record-keeping procedures for financing, testing, and adverse event recording, and product recall procedures.
- (15) Proposed hours of operation.
- (16) Recycling and Waste disposal information.
- (17) Medical recommendation verification and youth access restriction procedures.

- (18) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
- (19) Detailed description of energy and water usage plan enumerating best practices and leading industry practices in efficient utilization of both resources.

(B) The City Council or City Manager may deny an application for a Commercial Cannabis Permit for Good Cause or if the applicant has been convicted of an offense that is substantially related to the qualifications, functions or duties of the business or profession for which the application is made ~~within five (5) years of submitting the permit~~, except that if the City Council determines that the applicant is otherwise suitable to be issued a Permit and granting the Permit would not compromise public safety, the City Council may conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the City Council will include, but not be limited to, the following:

- (1) A felony or misdemeanor conviction for the illegal use, possession for sale, distribution, manufacture, transportation, or cultivation or similar activity related to of a controlled substance as defined in the Federal Controlled Substances Act.
- (2) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.
- (3) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.
- (4) ~~A felony conviction involving fraud, deceit, or embezzlement.~~

(C) The Chief of Police or his/her designee shall review each application to determine whether it contains all the required information. If the application does not contain all of the required information, it shall be returned to the applicant for completion. The Chief of Police or his/her designee will endeavor to conclude their review within thirty (30) days of the filing of the application. If additional time is necessary, the Chief of Police or his/her designee will advise the applicant of an estimated review time.

(D) In reviewing an application for a Permit pursuant to this Chapter or in reviewing the proposed Commercial Cannabis Business, the Chief of Police or his/her designee may request whatever additional information is deemed necessary to carry out the purposes of this Chapter.

(E) The City Council shall have the authority to either grant or deny the application consistent with this Chapter 18 ~~for Good Cause~~ for a Commercial Cannabis Permit when submitted to Council along with a Use Permit issued in accordance with Article IX of the Municipal Code. The City Manager shall have the authority to either grant or deny the application ~~for~~ consistent with this Chapter 18 ~~Good Cause~~ for a Commercial Cannabis Permit when submitted for consideration without a Use Permit, except all Commercial Cannabis Permits for Level Two Manufacturing shall be approved by the City Council. Notwithstanding what is otherwise provided in this Chapter, the City Council or City Manager, when approving a Commercial Cannabis Permit, may place any additional limitations and conditions on the operation of a Commercial Cannabis Business the Council or City Manager deems necessary, consistent with the public interest and with this Chapter 18.

(F) In the event the City Manager shall consider the application for a Commercial Cannabis Permit, as proposed in this section, a mailed notice of an application for a Commercial Cannabis

Permit shall be provided at least ten (10) calendar days prior to the City Manager taking action on the Permit to all property owners and occupants within 300 feet of the proposed Commercial Cannabis Business. The notice shall contain the following:

- (1) A description of the proposed Commercial Cannabis Business and its location;
- (2) The date the application will be acted upon by the City Manager;
- (3) The general procedure for submitting comments prior to the City Manager taking action on the proposed Commercial Cannabis Permit;
- (4) A statement that any comments must be received within ten (10) calendar days of the notice date.
- (5) A statement that an administrative hearing may be scheduled upon request by any member of the public to allow the City Manager to receive public input prior to making a decision.

If an administrative hearing is requested by the public, the City Manager shall conduct an administrative hearing and make a decision.

(G) When a Permit application is approved or denied, the City Council or City Manager shall prepare and file a statement of decision giving the reasons for the approval or denial and the findings of fact upon which the decision is based. The City Clerk shall mail a copy of the statement of decision to the applicant upon filing and shall post the statement of decision on the City's Website and the City Hall bulletin board. ~~In the event the City Manager shall review and deny and approve or deny the application Permit, the applicant or any aggrieved person, may within ten (10) days of the mailing of written notice of the filing of the statement of decision or posting of the statement of decision, whichever is later,~~ appeal the decision to the City Council. All appeals shall be in writing and submitted to the City Clerk. An appeal fee must accompany the written appeal in an amount as indicated in the Master Fee Schedule.

~~(H) — In addition to whatever additional findings may be made by the City Council or City Manager, an application for a Commercial Cannabis Permit may be denied upon the finding of Good Cause which include one or more of the following findings:~~

- ~~(1) The applicant made one or more false or misleading statements or omissions on the Commercial Cannabis Permit application or during the application process.~~
- ~~(2) The Commercial Cannabis Business is not organized in strict compliance with all applicable laws and regulations.~~
- ~~(3) The applicant fails to meet the requirements of this Chapter, or the conditions of the Use Permit.~~
- ~~(4) The operation of the proposed Commercial Cannabis Business at the proposed location is prohibited by any state or local law or regulation.~~
- ~~(5) Any Person who is listed on the application has been convicted of a felony within the past ten (10) years. A conviction within the meaning of this section means a plea or a guilty verdict or a conviction or diversion following a plea of nolo contendere.~~
- ~~(6) Any Person who is listed on the application is a licensed physician making patient recommendations for medical cannabis pursuant to State law.~~
- ~~(7) The applicant or the operator listed in the application is less than twenty one (21) years of age.~~

PART 5. Section 4000.170 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

(A) Subject to the Health Insurance Portability and Accountability Act (HIPAA) regulations, each Commercial Cannabis Business shall allow City of Grover Beach officials to have access to the Commercial Cannabis Business's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than twenty-four (24) hours after receipt of the City's request or within a reasonable time as authorized in writing by the City.

(B) By January 30th of each calendar year each Commercial Cannabis Business shall file with the Chief of Police or his/her designee an audit of its financial operations for the previous ~~fiscal~~ calendar year, complete and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. The audit shall include but not be limited to a discussion, analysis, and verification of each of the records required to be maintained pursuant to this Chapter. The information contained in the audit shall be made available in standard electronic format which shall be compatible with Microsoft Office programs and software and which can easily be imported into either Excel, Access or any other contemporary software designated by the Chief of Police.

(C) All Commercial Cannabis Businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes until sold or distributed.

(D) Each Owner and/or operator of a Commercial Cannabis Business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of all employees currently employed by the Commercial Cannabis Business and shall disclose such register to any City of Grover Beach official upon request.

All records required by this Chapter shall be maintained by the Commercial Cannabis Business for a period of not less than seven (7) years and shall otherwise keep accurate records of all Commercial Cannabis Business activity and provide such records for inspection consistent with state law ~~California Business and Professions Code section 19327~~ and any additional rules established by state ~~the licensing authorities~~ authority pursuant to that section or the City Council by resolution or ordinance.

PART 6. Section 4000.190 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

Prior to the sale or the delivery of any edible cannabis or edible cannabis product the same shall be labelled and in tamper-evident packaging which at least meets the requirements of California Business and Professions Code sections 26120 et. seq. and similar state statutes 19347, as the same may be amended from time-to-time or superseded or replaced by subsequent State legislation or by any department or division of the State of California. The City Council may impose additional packaging and labelling requirements on cannabis or cannabis products by resolution.

PART 7. Subsection D of Section 4000.210 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

(D) In no case, shall any hazardous, flammable, or explosive substances be used to process or manufacture cannabis products on site other than approved by this Chapter. The City of Grover

Beach may inspect the Commercial Cannabis Business at any time during business hours to ensure compliance with this Section.

PART 8. Subsection (C) of Section 4000.220 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

(C) If a parcel or lot includes cultivation or nursery activities as defined in Business and Professions Code Section 26001 ~~§19332~~, the parcel or lot may have only one cultivation license or nursery license located on the parcel or lot and the cultivation and nursery activity must be permitted pursuant to this Chapter and state law.

PART 9. Subsections (A) and (B) of Section 4000.230 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, are hereby amended as follows:

(A) No edible cannabis products shall be sold or distributed on a retail basis at a Commercial Cannabis Business operating unless operating under a Permit issued pursuant to this Chapter and consistent with a license issued by the State of California in accordance with Business and Professions Code Sections 26000 ~~49334~~ et seq.

(B) All items to be sold or distributed retail shall be individually wrapped at the original point of preparation. Labeling must include any labeling requirements as required under State licensing and including but not limited to Business and Professions Code Sections 26120 et seq. ~~49347~~ or any other pertinent State licensing requirements for medical cannabis products.

PART 10. Section 4000.240 of Chapter 18, Article III, of the Grover Beach Municipal Code, Commercial Cannabis Uses, is hereby amended as follows:

Cannabis manufacturing facilities requiring a Type-6 state license (using non-volatile solvents) or Type-07 state license (using volatile solvents) as defined in Business and Professions Code Sections 26130 et seq. ~~§19344~~, shall be subject to the operational requirements determined and approved by Council. Council shall establish operational requirements by resolution. Type 7 state licenses, Level Two Manufacturing, shall be limited to using only ethanol as an allowed volatile solvent.

PART 11. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be in violation of the law, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared in violation of the law.

PART. 12. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances in conflict with those sections amended or added herein are hereby repealed.

PART 13. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it 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 December 4, 2017 and **PASSED, APPROVED,** and **ADOPTED** by the City Council on _____, 2018 on the following roll call vote, to wit:

AYES: Council Members -
NOES: Council Members -
ABSENT: Council Members -
ABSTAIN: Council Members -
RECUSED: Council Members -

**** D R A F T ****

JOHN P. SHOALS, MAYOR

Attest:

DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

DAVID P. HALE, CITY ATTORNEY



**MEETING MINUTES
PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
154 SOUTH EIGHTH STREET
GROVER BEACH, CALIFORNIA
WEDNESDAY, NOVEMBER 8, 2017**

CALL TO ORDER 6:31 p.m.

FLAG SALUTE Commissioner McLaughlin.

ROLL CALL: Commissioner McLaughlin, Vice Chair Blum and Chair Laferriere were present. Commissioner Rodman was absent.

City Staff: Community Development Director Buckingham, City Attorney David Hale, and Planner II Reese.

AGENDA REVIEW:

Action: It was m/s by Vice Chair Blum/Commissioner McLaughlin to hear item 3 prior to item 2, and the motion passed unanimously.

PUBLIC COMMENTS: There was no one present that wished to speak.

CONSENT ITEMS:

1. Meeting Minutes of Planning Commission Meeting of October 11, 2017

Action: It was m/s by Vice Chair Blum/Commissioner McLaughlin to approve the meeting minutes of October 11, 2017 as presented, and the motion passed unanimously.

PUBLIC HEARING ITEMS:

**3. Development Application 17-36
Applicant – TDR Properties LLC**

The Planning Commission will consider a Coastal Development Permit, Development Permit, and Use Permit to modify Development Application 06-49 for an approved 5,400 square foot mixed-use building to construct an architectural feature with a height of approximately 36.1 feet that exceeds the maximum building height of 35 feet and a fence with a height of 7 feet that exceeds the maximum fence height of 6 feet. The property is located at 200 South 4th Street (APN 060-213-013) in the Coastal Industrial (CI) Zone within the Coastal Zone. The modification to the project is categorically exempt from the California Environmental Quality Act.

Planner Reese presented the staff report.

Chair Laferriere opened the public hearing.

Thomas da Rosa, applicant, Arroyo Grande resident, stated that the increased building height was a result of needing an elevator that could accommodate a gurney, and that the requested fence height was due to security.

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Gary Garza, project manager, added that the trash enclosure is also adjacent to one of the arches, so the fence would provide screening. He also stated that having the fencing to the south and west of the building the same height as the arches would be aesthetically superior than at the six foot height.

Chair Laferriere closed the public hearing.

Action: It was m/s by Vice Chair Blum/Commissioner McLaughlin to 1) remove condition CDD-2 and 2) adopt Resolution 17-18. The motion carried on the following roll call vote:

AYES: Commissioner McLaughlin, Vice Chair Blum, Chair Laferriere.
 NOES: Commissioners – None.
 ABSENT: Commissioner Rodman.
 ABSTAIN: Commissioners – None.

Resolution No. 17-18: A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GROVER BEACH, APPROVING DEVELOPMENT APPLICATION 17-36, FOR A COASTAL DEVELOPMENT PERMIT, DEVELOPMENT PERMIT, AND USE PERMIT TO AMEND DEVELOPMENT APPLICATION 06-49 (200 SOUTH 4TH STREET)

**2. Development Application 17-40
Applicant – City of Grover Beach**

The Planning Commission will consider making a recommendation to the City Council to amend Municipal Code Article IX Sections 4.10.045 and 9.10.020 and a Local Coastal Program Amendment to increase the maximum number of dispensaries to four and make revisions to be consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). An Initial Study and Negative Declaration was previously prepared and adopted that evaluated up to four dispensaries for Ordinance 17-05.

Director Buckingham presented the staff report. He added that the term “dispensary” has been replaced with “retailer” and applies whether the entity is open to the public or is delivery only. The Commission was provided with a revised version of the proposed ordinance.

Chair Laferriere opened the public hearing.

Kathy Schultz, Shell Beach resident, owner of Coastal Dance and Music Academy, requested that the Commission, when evaluating a Use Permit, consider nearby sensitive uses and the displacement of successful businesses.

Joseph Agrusa, Grover Beach resident, stated the businesses will improve the area, adding security and lighting.

Matthew Bashwiner, CFO of The Monarch, stated additional retail licenses would be beneficial because two licenses would limit the market too much.

Sunni Mullinax, CEO of The Monarch, expressed her support for four retail licenses.

Lynnette Navarro, Grover Beach resident and business owner, stated that she has seen a lot of changes in the area since January. She stated that four retailers were too many for such a small area.

Susan Cleek, Grover Beach resident, stated that the businesses in the industrial areas were overwhelmed when the ordinance was adopted. For a city that is two square miles in size, two seems enough.

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Wendy Cronin, 805 Beach Breaks, stated that there are over 200 retailers that operate county-wide now, and effective January 2018, each one will need to be affiliated to a “brick and mortar” location. Therefore, more than two sites in the City are needed.

Todd Mitchell, Grover Beach resident, provided a non-emailed version of correspondence submitted after publication of the staff report. He provided a summary of the letter, specifically requesting that delivery only establishments be considered separately from the four retailer (previously dispensary) licenses.

Chair Laferriere closed the public hearing.

City Attorney Hale clarified that as proposed, deliveries can only be made by a retailer or microbusiness license (type 10 or 12 state license) with a physical location, whether they are open to the public or are delivery only. The Commission further discussed the concept of allowing retailer and microbusinesses that are not open to the public indicating that this would reduce traffic.

Action: It was m/s by Vice Chair Blum/Commissioner McLaughlin to 1) recommend the City Council adopt the ordinance as presented and 2) recommend the City Council consider allowing retailer and microbusinesses with a physical location in the city that are not open to the public (i.e., delivery only). The motion carried on the following roll call vote:

- AYES: Commissioner McLaughlin, Vice Chair Blum, Chair Laferriere.
- NOES: Commissioners – None.
- ABSENT: Commissioner Rodman.
- ABSTAIN: Commissioners – None.

COMMISSIONERS' COMMENTS

COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Director Buckingham announced that Commissioner interviews are scheduled for December 18, and the next Planning Commission meeting is scheduled to be a special meeting on December 19, 2017 at 6:30. He also provided updates regarding construction at 950 El Camino Real and a potential proposal for 1598 El Camino Real involving two hotels and residential units.

ADJOURNMENT 7:53 p.m.

CHAIR LAFERRIERE

SECRETARY TO THE PLANNING COMMISSION
BRUCE BUCKINGHAM, COMMUNITY DEVELOPMENT DIRECTOR

(approved at PC meeting of _____)

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October 16, 2017

Honorable Mayor and City Council,

As one of the 7 qualified dispensary applicants we applaud your consideration of moving 4 forward to the dispensary land use and cannabis permits. As one of three remaining qualified applicants Trident Management was on the top four list of two of the City Council Members (Barbara Nicolls and Mariam Shah).

With there being so many possible items regarding land use including: parking, setbacks, sensitive uses, as well as others we request your consideration to assign alternates of the final three ranking, these could also be priority for future permits / licenses:

5. GDI Grover Beach Retail – 650 Farroll Road
6. Trident Management Solutions – 1071 Highland Way
7. House of Holistics – 821 South 4th Street

We are also requesting your consideration to provide direction to staff to clarify what is needed for the following cannabis / use permits we are applying for as allowable by CA state law:

- A. **Manufacturer 2 / Type 7, volatile with solvents** – Grover Beach’s information is very thorough and appears to exceed mandates in CA state law.
- B. **Distributor / Type 11** - “Distributor,” for the distribution of cannabis and cannabis products. A distributor licensee shall be bonded and insured at a minimum level established by the licensing authority. CHAPTER 7. Retailers and Distributors [26070 - 26070.5]
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=10.&title=&part=&chapter=7.&article= CHAPTER 11. Quality Assurance, Inspection, and Testing [26110- 26110.]
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=10.&title=&part=&chapter=11.&article=
- C. **Retailer / Delivery Only** - A retailer shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted. A retailer’s premises may be closed to the public. A retailer may conduct sales exclusively by delivery. CHAPTER 7. Retailers and Distributors [26070 - 26070.5]
http://leginfo.legislature.co.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=10.&title=&part=&chapter=7.&article=

As your local constituent I believe that you understand the financial and personal commitments it has taken to purchase land, write competitive applications with the HDL / Grover Beach process, and hold off on operations all the while. Our example is one of many having invested nearly one million dollars and countless hours.

We have applied for use permits and plan to revise changing the dispensary building to supporting distribution, retail delivery only, and manufacturing.

Please do not hesitate to contact me for anything.
Sincerely,

Todd Mitchell
1071 Highland Way
And
933 Manhattan Ave.
(805)440-1976
Todd@HighlandUnlimited.com