



PLANNING COMMISSION STAFF REPORT

TO: Honorable Chair & Planning Commission **DATE:** January 11, 2017

FROM: Bruce Buckingham, Community Development Director

PREPARED BY: Bruce Buckingham, Community Development Director
David Hale, City Attorney
John Peters, Police Chief

SUBJECT: Development Application 16-35 – City request to approve an Amendment to Article IX of the Municipal Code and a Local Coastal Program Amendment to Allow the Establishment of Commercial Cannabis Uses in an Overlay Zone on Approximately 70 acres in the Industrial Zone and a Portion of the Coastal Industrial Zone Generally Located South of Farroll Road, North of Highland Way, East of South 4th Street and West of South 13th Street

RECOMMENDATION

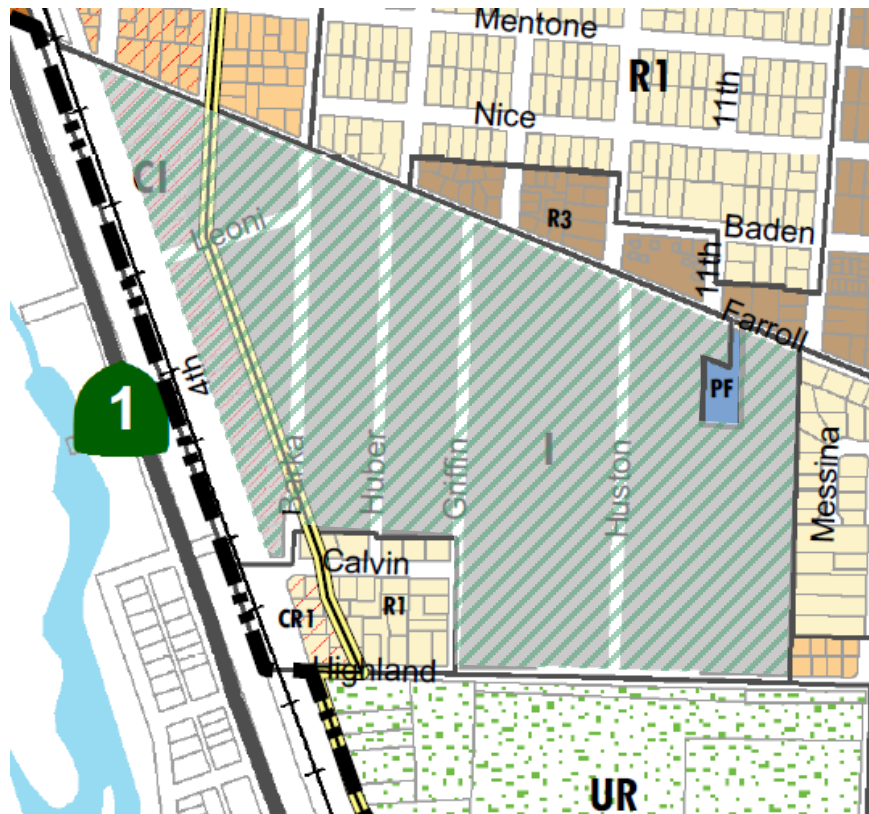
Staff recommends that the Planning Commission by minute action, recommend the City Council adopt the Negative Declaration and approve an amendment to Article IX of the Municipal Code and a Local Coastal Program Amendment to allow the establishment of commercial cannabis uses in a 70 acre Overlay Zone generally located south of Farroll Road, north of Highland Way, east of South 4th Street and west of South 13th Street.

BACKGROUND

The City Code currently prohibits all commercial cannabis activities in the city. In July 2016, the City Council directed staff to start working on a draft ordinance that would regulate commercial cannabis uses consistent with the Council's FY 17 Goals and Work Program. Subsequently, the Council held meetings in August and September to provide staff direction on the framework for a draft ordinance that would allow and regulate commercial medical cannabis uses (reference Attachments 3 through 6 for staff reports and Council minutes).

Project Description

Based on the direction from the Council, staff has prepared a draft ordinance and Local Coastal Program Amendment for the Commission and Council to consider. The proposed land use ordinance would allow the following commercial medical cannabis activity and uses: cultivation, nurseries, manufacturing, testing laboratories, transportation, delivery, distribution (includes storage), and dispensaries (retail sales). These proposed commercial cannabis uses would be allowed subject to the approval of a Use Permit within an Overlay Zone on approximately 70 acres consisting of the Industrial (I) Zone and a portion of the Coastal Industrial (CI) Zone as shown below:



This proposed land use ordinance requires an amendment to the Development Code (Article IX of the Municipal Code). In addition, a regulatory ordinance is being drafted by staff that will amend Article III of the Municipal Code establishing regulations on the commercial medical cannabis operations. The regulatory ordinance is not under the purview of the Planning Commission since it is not land use related. Therefore, the Planning Commission will review and consider a recommendation to the Council only on the land use portion of the ordinance that will be considered by the Council. The City Council will review the draft regulatory requirements and the Commission's recommendation on the land use ordinance at the February 6, 2017 Council meeting.

The draft Ordinance is limited to commercial cannabis businesses for medical uses as commercial businesses for non-medical uses will not be licensed by the State until 2018. As currently drafted, the Ordinance does not allow recreational marijuana uses other than personal possession and cultivation that is preempted by statewide passage of Proposition 64 in November 2016.

Local Licensing

In order to operate, commercial 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 Activity Permit to assure that all regulatory requirements are met.

State Licensing

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). These laws establish the regulatory and licensing structure for the cannabis industry for medical uses.

Passage of Proposition 64 legalized use of recreational marijuana and established a regulatory structure for regulating these uses. The State will begin accepting license applications in January 2018 for recreational marijuana businesses and will also require a local permit be approved, if the local agency adopts an ordinance allowing for commercial recreational uses. However, cities cannot consider approving local licenses until January 2018 for recreational 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.

As a result of these statewide actions, the cannabis industry will be adjusting to the new regulatory oversight in California by both the State and the local agencies that choose to allow and regulate this industry. Local agencies in California generally have very little experience regulating cannabis uses and best practices will evolve over time. As such a city that is choosing to allow and regulate this industry, City staff will adapt to the impacts and requirements of the ordinance and propose adjustments as needed for consideration by the Council. It should be noted that this draft land use ordinance has no effect on Proposition 64 regulations related to personal cultivation and use. The Council did direct staff to prepare an ordinance addressing personal cultivation which has been included in the regulatory ordinance.

Tax Measures

In November 2016, residents approved Measure L-16 to impose a maximum 5% tax on the gross receipts for commercial medical cannabis uses and a maximum 10% tax on gross receipts for non-medical commercial cannabis uses. Marijuana cultivation and nurseries are taxed at a maximum of \$25 per square foot of canopy on the first 5,000 square feet and \$10 per square foot on the remainder. The Council will consider adoption of the tax ordinance at its February 6, 2017 meeting. The State has also established an excise tax on cannabis sales and activities through passage of Proposition 64 in addition to the City's tax approved by voters.

Local Coastal Program Amendment

A portion of the proposed Overlay Zone is within the Coastal Zone, therefore a Local Coastal Program (LCP) Amendment is required. An LCP Amendment would require the Coastal Commission's approval prior to the ordinance taking effect in the Coastal Zone (i.e., the Coastal Industrial Zone). Staff has contacted Coastal Commission staff regarding the proposed amendment and in general they have no objections to cannabis uses within the Coastal Zone. Upon final adoption of the ordinance by the Council, staff would forward the LCP Amendment to the Coastal Commission for review. It is estimated it will take four to six months for formal approval by the Coastal Commission upon final action by the Council. During this time, no Use Permit applications could be considered for the portion of the Overlay Zone in the Coastal Industrial Zone though such applications could be considered for the rest of the Overlay Zone.

DRAFT LAND USE ORDINANCE

The draft land use ordinance amends Municipal Code Article IX, also known as the Development Code. The discussion below provides an overview, purpose, and alternatives for each section/subsection of the draft land use ordinance.

2.40.020 Purpose of the Industrial Zones

This section establishes the purpose of the three industrial zones. Staff has amended the Industrial (I) and Coastal Industrial (CI) Zones to indicate that commercial cannabis uses are appropriate uses.

2.40.030 Industrial Zones Allowable Land Uses & Permit Requirements

This Table establishes the type of land use permit required for commercial cannabis uses. The

Council identified that all commercial cannabis uses should require a Use Permit to operate. A Use Permit is a discretionary permit and can only be approved if specific findings are made in the affirmative. A new category “Commercial Cannabis Activity & Uses” has been added to the Table indicating that uses could be allowed in the Coastal Industrial (CI) and Industrial (I) Zones subject to approval of a Use Permit. A “Specific Use Regulations” refers to Section 2.90.040 Commercial Cannabis Activity Overlay Zone which provides the specific operational requirements and development standards.

2.90.040.A Overlay Zone

This section establishes the physical boundaries of where commercial cannabis uses could be permitted. The Council identified the Overlay Zone of approximately 70 acres generally located south of Farroll Road, north of Highland Way, east of South 4th Street and west of South 13th Street as the appropriate location to be considered for commercial cannabis uses. The area is comprised primarily of small to medium size businesses in buildings less than 20,000 square feet in size with many under-utilized and vacant lots. There are existing residential zones directly to the north, east, and southwest of the Overlay Zone.

Alternatives to the proposed Overlay Zone would be to reduce the area, or increase the area by adding other commercial and/or industrial zoned areas of the city.

2.90.040.B Review Authority

This section establishes which body is responsible for reviewing and making decisions on a Use Permit application. The Council identified that the Council should be the Review Authority for commercial cannabis uses, with the Planning Commission providing a recommendation. Currently, the Council only reviews development applications if the proposed project requires a legislative action (e.g., General Plan or Development Code Amendment) or a tentative map consisting of five or more lots.

Alternatives to the Council as the Review Authority would be for the Planning Commission to be the Review Authority. This would still allow Planning Commission decisions to be appealed to the City Council. Another alternative would be to have the Council as the Review Authority, but eliminate the requirement for the Commission to make a recommendation to the Council. This would eliminate the need for a Planning Commission public hearing. Either alternative would expedite the review process by requiring only one public hearing, unless an appeal was filed.

2.90.040.C Permit Requirements

This section establishes what type of land use permit is required for commercial cannabis uses. The Council identified that a Use Permit application is the appropriate type of permit. A Use Permit requires a public hearing and all property owners within 300 feet of the proposed project site are mailed notices. This advises surrounding property owners and allows them to access information on the proposed project and provide written and/or oral comments to the Review Authority.

2.90.040.D Limitation on the Number of Uses

This section establishes whether a limitation shall be placed on the number, size and/or type of commercial cannabis uses. The Council identified that dispensaries shall be limited to no more than four businesses within the city. The Council did not identify limitations on the number or size of other cannabis uses (e.g., cultivation, manufacturing, etc.) although the city’s Commercial Cannabis Activity Permit will be issued with the same limitations on use as required under current State Statutes.

Alternatives for the limitation on uses could include establishing a maximum size (i.e., square footage) and/or number of businesses. Based on inquiries received by staff, the vast majority

are related to the operation of dispensaries, which the draft ordinance would limit to four. The next most common inquiry has been for cultivation/nursery uses. There have been only a few inquiries related to manufacturing, storage/distribution, and testing laboratories.

Another alternative is to establish a minimum distance between uses to avoid a concentration of like businesses in a small area. However, this may not be as critical for the majority of commercial cannabis uses since they are not open to the public, and would not operate any differently than other types of industrial businesses (i.e., employees and deliveries arrive and depart the business location). However, the distance between uses could be more appropriate for dispensaries.

Cultivation/nursery uses typically require more water than typical industrial uses (reference section below on Water Recycling). An alternative would be to limit the maximum square footage for cultivation. Staff is recommending that a total aggregate maximum area between 88,000 and 132,000 square feet be established for cultivation/nursery uses. Based on the 22,000 square foot maximum indoor cultivation area established by the State, this would allow between four and six 22,000 square foot facilities. This would cap water consumption and could be reevaluated in the future if demand exceeded the maximum area.

2.90.040.E Development Standards

Consistent with many types of land uses, the Development Code provides specific development standards to assure that business operations do not adversely impact surrounding residences and businesses. This can be achieved by requiring design standards, limitations on the size and type of uses, limiting hours of operations, or other methods as discussed below.

2.90.040.E.1 Requirements of Municipal Code Article III Chapter 18

This section requires all commercial cannabis uses to comply with the regulatory ordinance (i.e., Municipal Code Article III Chapter 18). As previously mentioned, the regulatory ordinance is not part of the Planning Commission's review of the land use ordinance, but will be part of the Council's review. Once a Use Permit is approved for any commercial cannabis use, the regulatory ordinance will require the applicant to obtain a Commercial Cannabis Activity Permit from the Police Department upon demonstrating compliance with state law prior to opening the business and on an ongoing basis to ensure the business is operating in compliance with state and local laws.

2.90.040.E.2 Dispensary Setbacks from Residential Zones

This section establishes whether a setback (minimum distance) shall be established from residential zones for commercial cannabis uses. The Council identified that dispensaries shall be setback a minimum of 100 feet from all residential zones (reference Attachment 7). The Council did not identify minimum setback for other types of commercial cannabis uses to residential zones or minimum distances from other types of uses such as nonconforming residential uses.

State law require dispensaries be located a minimum of 600 feet from schools (K-12 public and private). Local agencies can be more restrictive and include other sensitive uses such as parks, preschool/daycare centers, and churches. Attachment 9 provides the location of all schools, parks, and commercial daycare centers in the City. The closest public school to the proposed Overlay Zone is approximately 1,600 feet, the closest existing private school is approximately 300 feet (located at Baden Avenue and South 11th Street), the closest public park is approximately 1,400 feet, and closest preschool/daycare center is approximately 300 feet.

It should also be noted that the industrial zones may allow youth-oriented activities such as dance studios of which two currently operate on Huston Street. Staff did not identify any

existing churches within 600 feet of the industrial area, but churches may also operate in residential and industrial zones. Attachment 11 is the Industrial Zones Allowable Land Use Table that indicates all allowed uses. Definitions of all the land uses can be found in Development Code Chapter 9 which is available for viewing at <http://www.grover.org/DocumentCenter/Home/View/2763>.

Alternatives for setbacks include increasing/decreasing the 100 foot setback for dispensaries from residential zones. Attachment 8 provides an example of a 300 foot setback. Other options include establishing minimum setbacks for other types of commercial cannabis uses to sensitive uses such as parks, preschool/daycare centers, and churches, or increasing the State's minimum 600 foot setback from schools.

2.90.040.E.3 Dispensary Hours of Operations

Staff is recommending the hours of operations for dispensaries be limited between the hours of 9:00 a.m. to 9:00 p.m. Dispensaries would also be able to make deliveries during operating hours. The Police Department is concerned that longer hours of operations could create opportunities for illicit activity occurring in the area. Marijuana businesses predominately operate as cash businesses and as such can be more prone to robberies than other businesses. As night-time hours arrive, the cover of darkness is an advantage for criminals looking to rob a business. The recommended operational hours will allow for better security of the facilities and surrounding community.

Alternatives include reducing or expanding the hours of operations and/or delivery times.

2.90.040.E.4 Design Standards

This section establishes minimum design standards for all commercial cannabis uses. The Council indicated support for design standards, especially for upgrading older industrial buildings. Staff's focus has been on preparing the land use and regulatory ordinances and has not started preparing design standards. Staff will seek additional direction from the Council and return with a draft in the future. In the interim, the Commission/Council would have the ability to require architectural enhancements to existing buildings.

2.90.040.E.5 Loading/Unloading Within the Building

Staff is recommending that all commercial cannabis uses conduct deliveries and loading/unloading within an enclosed and secure building area. The Police Department has concerns that the loading and unloading of marijuana products and currency in public access areas creates opportunities for crimes such as robbery, theft and assaults. By having the products loaded and unloaded in secured areas of the facility, these crime opportunities are greatly diminished.

Alternatives include securing loading/unloading within a fenced area not visible from the street, or not requiring a secure area for loading/unloading.

2.90.040.E.6 Odor Control

This section establishes the requirement that odor control devices be incorporated into all commercial cannabis uses. The Council indicated that controlling odors is important so as not to adversely impact surrounding businesses and residences. This section would require that marijuana odors are not detectable from the property boundary, public right-of-way and within common areas of multi-tenant buildings for all commercial cannabis uses.

2.90.040.E.7. Water Recycling Management Plan

This section establishes a requirement that all cultivation/nursery uses prepare a Water Recycling Management Plan. The Council indicated support for recycling water at a level up to

90%, if feasible. After additional research and preparation of the Negative Declaration, it was determined that many cultivators use hydroponic systems that by design typically minimize water usage. Conversely, cultivators using soil consume more water than hydroponic growers. As a result, staff has drafted the ordinance to require that applicants demonstrate that water is recycled to the maximum extent feasible using best management practices. This allows different methods of irrigation, while still assuring that water consumption is limited to the maximum extent feasible.

The Negative Declaration analyzed water consumption for cultivation and concluded that approximately 1.3 acre feet per year (ac/ft/yr) would be required for a 22,000 square foot hydroponic facility and approximately 1.6 ac/ft/yr for soil with water conservation requirements.

The following table provides some comparisons on water demand based on cultivation area for hydroponic and soil irrigation with the last column assuming a 50% hydroponic and 50% soil irrigation:

Water Demand

Cultivation Area in s.f.	No. of Facilities (assuming max. of 22,000 s.f.)	Hydroponic Irrigation	Soil Irrigation	Blended Irrigation 50% Hydroponic & 50% Soil
22,000	1	1.3 ac/ft/yr	1.6 ac/ft/yr	1.45 ac/ft/yr
44,000	2	2.6 ac/ft/yr	3.2 ac/ft/yr	2.90 ac/ft/yr
66,000	3	3.9 ac/ft/yr	4.8 ac/ft/yr	4.35 ac/ft/yr
88,000	4	5.2 ac/ft/yr	6.4 ac/ft/yr	5.80 ac/ft/yr
110,000	5	6.5 ac/ft/yr	8.0 ac/ft/yr	7.25 ac/ft/yr
132,000	6	7.8 ac/ft/yr	9.6 ac/ft/yr	8.70 ac/ft/yr
220,000	10	130 ac/ft/yr	160 ac/ft/yr	145 ac/ft/yr

ac/ft/yr = acre-feet per year

Alternatives to consider include establishing a maximum number of businesses and/or square footage for cultivation/nursery uses. Most agencies have established a maximum area for cultivation. Staff is recommending that a maximum area between 88,000 and 132,000 square feet be established for cultivation/nursery uses.

2.90.040.E.8 Manufacturing Solvents

This section references the regulatory ordinance which contains requirements on the manufacturing process and storage of volatile compounds used in the manufacturing process. The State has classified manufacturing into two categories, Level 1 and Level 2. Level 1 consists of manufacturing without the use of volatile fluids or solvents, which greatly reduces the risk of fire by not using and storing hazardous and flammable materials. Level 2 allows these volatile solvents and fluids. The Council indicated initial support for including both Level 1 and 2 manufacturing and the ordinance as drafted includes both categories.

State law regulates the storage and use of volatile compounds, which are overseen by the County Environmental Health Department. However, safety of the use of these compounds is dependent on the care, proper storage, vessel size and vessel orientation to the manufacturing facility as well as adjacent existing structures. The regulatory ordinance will include requirements for closed loop laboratories that aid in safety, but are expensive to construct. However, even with these precautions and closed loop systems, the use of volatile compounds in the industrial zone and proximity to existing residential neighborhoods poses a risk to employees, the public and first responders. As a result, staff does have concerns associated with the use of volatile compounds in Level 2 manufacturing. Staff is aware of alternative manufacturing processes that do not require the use of volatile compounds.

2.90.040.E.9 Operations and Security Plan

This section references the regulatory ordinance which contains requirements for security measures for all commercial cannabis uses. The Council indicated support for requiring an Operations and Security Plan for all commercial cannabis uses. The cannabis industry is primarily a cash business as current federal law prohibits the banking industry's involvement which makes the industry more susceptible to crime.

2.90.040.E.10 Outdoor Cultivation Prohibited

This section would prohibit cultivation and nursery uses outdoors and in greenhouses. The Council indicated that all cultivation and nursery uses should be within an enclosed building.

2.90.040.E.11 Cultivation Mixed-Light Buildings

This section would allow for the use of mixed-light buildings for cultivation/nursery uses if mixed-light buildings are licensed by the State for the subject property. The Council indicated support for mixed-light buildings which allows for a combination of artificial and natural light and have solid walls with roof panels that allow natural light (reference Attachment 10 for an example of a building design). Based on concerns that light and glare could be emitted from the building, staff has added the requirement that mixed-light buildings have no visible light emitting from cultivation areas of the building from dusk to dawn.

2.90.040.F Signs

This section establishes limitations on the number, type and size of signs for dispensaries. Staff is recommending that dispensary signage be limited to a maximum of one building mounted sign not to exceed 10 square feet that identifies the business name only. Signs shall not contain logos, graphics or list products or services offered.

2.90.040.G Required Findings

This section establishes the required findings that must be made in the affirmative in order to approve a Use Permit. The findings include the standard Use Permit findings, compliance with all provisions of the regulatory ordinance and that applicant have passed an initial background check.

6.10.020 Review Authority

As previously discussed, this section would require that the Council be the Review Authority for all commercial cannabis uses.

9.10.020 Definitions

A definition for Commercial Cannabis Activity and Uses was added to this section.

Other Ordinance Considerations

Parking

The Development Code establishes minimum parking requirements by land use as follows:

- Retail (Dispensary) & Office Uses: 1 parking space per 250 square feet
- Manufacturing Uses: 1 parking space per 500 square feet
- Warehouse/Storage/Distribution: 1 parking space per 1,000 square feet

Staff believes the existing parking standards adequately address the parking demand for all commercial cannabis uses, except cultivation/nursery uses. The City does not have parking standards for agricultural uses. However, newly constructed buildings that would be used for cultivation/nursery uses could be used in the future for other more intensive uses. Staff

recommends that cultivation/nursey uses be interpreted as similar to the parking required for warehousing/storage/distribution (i.e., 1 space per 1,000 square feet). This would allow the future reuse of buildings for warehousing/storage. It would be up to the applicant to determine if they wanted to provide additional parking (e.g., 1 space per 500 square feet) which would allow the potential reuse for manufacturing or more parking intensive uses.

Another issue related to parking is that many of the older industrial buildings were developed with substandard parking and do not meet the current Development Code minimum parking requirements (shown above). This limits potential reuse of buildings unless the Council revises the parking standards. For example, if an existing 5,000 square foot building has five parking spaces (i.e., one space per 1,000 square feet), then it could accommodate a storage/distribution use. However, it could not accommodate manufacturing or a dispensary use because it does not meet the minimum parking standards.

Grover Business Park

The Grover Business Park consists of 15 lots on Huston Street and was originally approved by the Planning Commission as a Use Permit in 1998 and subsequently amended several times, the latest in 2014. To date only four lots have been developed, with 11 remaining vacant lots. The property owner has received many inquiries for the vacant lots related to potential commercial cannabis uses. The Use Permit has several unique conditions of approval including specific building design requirements and a limitation on the type of uses that places an emphasis on job generating uses and a prohibition on uses that would create few jobs, such as storage/warehouse uses. In addition, cultivation/nursery uses could also be interpreted as inconsistent with the intent of the existing Use Permit. If the intent of the Commission/Council is to allow all the uses defined as Commercial Cannabis Activity and Uses, including cultivation/nursery and storage/ distribution uses, then staff recommends that the Council direct staff to prepare an amendment to the Use Permit for Planning Commission action.

Design Guidelines

As previously discussed, the Council indicated a desire to have design guidelines for commercial cannabis uses. At a future meeting, the Council should provide direction on whether the design guidelines should apply to all industrial zones, not just Grover Business Park and commercial cannabis uses.

Phased Permitting Approach

As the Commission/Council moves forward in the process of considering a draft ordinance, the Council may want to consider either establishing a limit on the size and/or number of uses (e.g., maximum square footage for cultivation area) or not set a maximum, but limit the number of businesses annually that could be permitted. By allowing fewer uses and/or square footage of area with the initial ordinance, staff would have time to assess the effectiveness of both the land use and regulatory process and respond to issues and make adjustments before issuing more licenses/permits. This approach has been used by several cities. Future amendments to the ordinance to increase the number and size of facilities can be made by the Council at any time.

Fiber Optic

The Council has approved proceeding with the installation of a fiber optic broadband project that would serve the City's industrial and commercial zones as an economic development tool, including the Overlay Zone. The majority of the vacant land is located on Huston Street and has long been an economic development focus for creating higher paying head of household jobs. Since vacant land is less expensive than developed land, if the ordinance allows cannabis businesses on Huston Street, the properties would likely be developed. Therefore, the Commission/Council may want to consider how to balance cannabis uses with future demand for other industrial uses.

Environmental Review

The City contracted with Rincon Consultants to prepare a draft Initial Study for the proposed ordinance. The Initial Study concluded that there were no potentially significant environmental impacts and a Negative Declaration could be adopted. The primary topic discussed in the Initial Study was the amount of water required for cultivation/nursery uses. Based on a reasonable assumption regarding the potential total area of cultivation/nursery uses and the requirement to recycle water using best management practices, the Initial Study concluded that the city has adequate water supply for cultivation/nursery uses.

ALTERNATIVES

The Planning Commission has the following alternatives to consider:

1. By minute action, recommend the City Council adopt the Negative Declaration and approve an amendment to Article IX of the Municipal Code and a Local Coastal Program Amendment to allow the establishment of commercial cannabis uses in a 70 acre Overlay Zone generally located south of Farroll Road, north of Highland Way, east of South 4th Street and west of South 13th Street; or
2. Provide alternative direction to staff.

PUBLIC NOTIFICATION

On December 29, 2016, the public hearing notice was published in The Tribune and mailed to all property owners located within the proposed Overlay Zone and within 300 feet of the Overlay Zone. The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Draft Negative Declaration
2. Draft Land Use Ordinance
3. City Council Staff Report Dated August 15, 2016
4. City Council Minutes Dated August 15, 2016
5. City Council Staff Report Dated September 6, 2016
6. City Council Minutes Dated September 6, 2016
7. Overlay Zone with 100-foot Buffer
8. Overlay Zone with 300-foot Buffer
9. Potential Sensitive Uses Map
10. Example of Mixed-Light Building Design
11. Industrial Zones Allowable Land Use Table