

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: MATTHEW BRONSON, CITY MANAGER
BRUCE BUCKINGHAM, COMMUNITY DEVELOPMENT DIRECTOR**

**SUBJECT: DIRECTION ON PROPOSED ORDINANCE TO REGULATE COMMERCIAL
MEDICAL MARIJUANA USES**

BACKGROUND

The City Code currently prohibits all commercial medical marijuana activities in the city. On July 5, 2016, the City Council directed staff to start working on a draft ordinance that would regulate commercial medical marijuana uses consistent with the Council's FY 17 Goals and Work Program. As an initial step, staff is requesting the Council provide direction to frame the major components of the draft ordinance. Staff will then proceed drafting an ordinance regulating commercial medical marijuana uses. This process will include environmental review in compliance with the California Environmental Quality Act (CEQA). Upon completion of the draft ordinance and the public review period for the CEQA document, a public hearing will be held by the Planning Commission to make a recommendation to the City Council. The City Council will then hold a public hearing to consider first reading of the draft ordinance regulating commercial medical marijuana uses before a second meeting to formally adopt the ordinance, which would take effect 30 days following the adoption. Prior to Council adoption, the City cannot process any development applications related to any commercial medical marijuana uses. Staff previously estimated in July that the process would take approximately four to six months to complete or by the end of this calendar year.

In addition to the above process prescribed by State law, the Council could also consider holding a public workshop to provide information and solicit questions and comments on the draft regulatory ordinance. Such a workshop could also be an opportunity to provide information about Measure L-16, the November 2016 ballot measure to tax commercial cannabis activities. Measure L-16 proposes a 5% tax on the gross receipts for commercial medical marijuana uses and 10% tax on gross receipts for non-medical commercial medical marijuana uses. The measure would tax marijuana cultivation and nurseries at \$25 per square foot of canopy on the first 5,000 square feet and \$10 per square foot on the remainder.

DISCUSSION

To inform the Council's discussion on regulating medical marijuana activities, staff has prepared this report identifying key issues that staff believes will need to be addressed in the draft ordinance. Staff has reviewed ordinances of cities that have adopted regulations for medical

APPROVED FOR FORWARDING

**MATTHEW BRONSON
 CITY MANAGER**

**Please Review for the Possibility of a
 Potential Conflict of Interest:**

None Identified by Staff Bright
 Shoals Nicolls
 Lee Shah

Meeting Date: August 15, 2016

Agenda Item No. _____

marijuana uses (i.e., dispensaries, cultivation, and manufacturing). Although there are several cities that have allowed dispensaries and cultivation, fewer have allowed manufacturing uses. Cities that have allowed medical marijuana uses have seen multiple applications when there is a limitation placed on the number of dispensaries or square footage of cultivation. The adoption of an ordinance for dispensaries could bring in multiple applications per allowable dispensary, if a limit is established. Staff does not recommend that the draft ordinance establish a process for how to select medical marijuana businesses if there are more applications than the number allowed by the ordinance. Rather, staff would recommend this issue be addressed separately if necessary.

Adoption of an ordinance for cultivation and manufacturing uses could immediately increase land values where allowed. This could also lead to the unintended consequences of having existing industrial buildings being purchased for cultivation and manufacturing resulting in the displacement of existing businesses. If demand for industrial space is increased as a result of an ordinance, the Council may want to consider using it as a redevelopment tool and include areas that would benefit from new investment.

An important starting point is State law regulating medical marijuana businesses. The State passed three laws (AB 266, AB 243, and SB 643) that took effect in January 2016 collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA). These laws establish the regulatory structure for the medical marijuana industry. The State will begin accepting license applications in January 2018 and any medical marijuana 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 MMRSA, the industry will be adjusting to the new regulatory oversight in California by both the State and the local agencies that choose to regulate the industry. Accordingly, local agencies in California have very little experience regulating medical marijuana uses and best practices will evolve over time. As a small organization, City staff will need to adapt to the requirements of the ordinance and make adjustments as needed and directed by Council. As the Council moves forward in the process of considering a draft ordinance, staff would recommend that the Council allow the uses it determines are acceptable, but consider a smaller number of facilities and/or square footage of area with the initial ordinance to assess demand for the uses and ensure that the regulatory process is working. 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. Such amendments could also address recreational marijuana uses if either Proposition 64 "Adult Use of Marijuana Act" or other State law permits the recreational use of marijuana.

A unique aspect of the medical marijuana industry is that all transactions use cash as current federal law prohibits the banking industry's involvement. In addition, depending on the size or volume of the business, the inventory can be very valuable and is readily sellable. As a result of these factors, medical marijuana businesses have been more susceptible to crime. Consequently, local agencies with similar ordinances have required security measures be incorporated into the businesses, such as alarms, security cameras, and other security measures. In addition, other security measures include background checks of all owners, investors, and employees. Unless directed otherwise by the Council, staff will include appropriate safety measures in the draft ordinance.

Lastly, odor from marijuana manufacturing, warehousing, and cultivation can adversely affect surrounding properties. Unless directed otherwise by the Council, staff will include

requirements for odor control systems in the draft ordinance to ensure odors would be mitigated.

Manufacturing, Warehousing/Distribution, Laboratory Testing

The medical marijuana industry includes the manufacturing of marijuana into a variety of products such as edibles, oils, and topicals. It also includes the warehousing/distribution of medical marijuana where the marijuana is stored until it is tested and allowed to be sold to a manufacturer or dispensary. The industry also includes laboratory testing where samples of marijuana are sent for testing and quality control. There are also laboratories that do research and development of medical marijuana products.

Location: The three types of medical marijuana uses proposed would include manufacturing, warehouse/distribution, and laboratory testing. Currently, these types of uses that are not medical marijuana related are permitted and/or require a Use Permit in the City's industrial zones. In determining the appropriate locations for medical marijuana uses, the Council may want to consider general factors such as the appropriate zone to cluster similar uses and distance from residential uses and sensitive uses (e.g., schools) to ensure any adverse impacts (e.g., odor and security) can be mitigated. Potential adverse impacts, known or unknown, may also be mitigated by limiting the square footage or number of facilities allowed.

The City has three industrial zones as shown on Attachment 9 (City Zoning Map): Coastal Industrial Commercial (CIC), Coastal Industrial (CI) and Industrial (I). The CI Zone (west of South 4th Street) and CIC Zones are both narrowly shaped zones with the majority of lots less than 150 feet from zones that allow residential uses. Only the Industrial (I) Zone and the Coastal Industrial (CI) Zone south of Farroll Road have a majority of lots that are not adjacent to residential zones.

If any zone is selected that lies within the Coastal Zone, a Local Coastal Program Amendment (LCPA) would be required. An LCPA would require the Coastal Commission's approval prior to the ordinance taking effect. Staff contacted Coastal Commission staff regarding medical marijuana uses and in general they have no objections to these uses. If the Council adopted an ordinance that was within both the Coastal Zone and areas of the City not within the Coastal Zone, the areas not within the Coastal Zone would be effective immediately.

The City's primary industrial area is located south of Farroll Road and consists of approximately 71 acres. This area consists primarily of small to medium size businesses in buildings less than 20,000 square feet in size with many under-utilized and vacant lots. 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. 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 medical marijuana businesses on Huston Street, the properties would likely be developed. Therefore, the Council may want to consider how to balance medical marijuana uses with future demand for other industrial uses.

Since this industrial area south of Farroll Road is likely to be considered by the Council, staff has prepared the following exhibits to assist in quantifying potential areas or "overlay" zones for medical marijuana businesses:

- Attachment 1 – Entire industrial area (I and CI Zones) south of Farroll Road consisting of approximately 71 acres. This includes approximately 100 lots.

- Attachment 2 – Entire industrial area south of Farroll Road with a 100 foot buffer from adjacent residential zones consisting of 59 acres. This includes approximately 75 lots.
- Attachment 3 – Entire industrial area south of Farroll Road with a 300 foot buffer from adjacent residential zones consisting of 35 acres. This includes approximately 36 lots.
- Attachment 4 – Industrial area south of Farroll Road (except for the CI Zone along South 4th Street) consisting of approximately 63 acres. This includes approximately 80 lots.
- Attachment 5 –Industrial area south of Farroll Road (except for the CI Zone along South 4th Street) with a 100 foot buffer from adjacent residential zones consisting of 53 acres. This includes approximately 50 lots.
- Attachment 6 –Industrial area south of Farroll Road (except for the CI Zone along South 4th Street) with a 300 foot buffer from adjacent residential zones consisting of 31 acres. This includes approximately 25 lots.

Buffers would provide a minimum distance that medical marijuana uses would be separated from adjacent residential zones. However, there are a few legal non-conforming residences within the industrial area; therefore, if it is important to provide a buffer from all residential uses, then a minimum setback could be established from any residential use. It is typical that a buffer distance be measured from the property boundary. Therefore, if only a small portion of the buffer area overlays a lot, then the entire lot is part of the buffer.

The Council has the following options regarding locations for allowable use:

- Allow manufacturing uses only in the industrial zones south of Farroll Road (Industrial (I) Zone and a portion of the Coastal Industrial (CI) Zone), which would require an overlay zone (reference Attachment 1). An overlay zone allows for a specific area to be identified to allow certain uses, typically for a portion of one or several zones.
- Same option as above, but require a minimum distance from any residential use.
- Modify the above option for an overlay zone to exclude the CI Zone (reference Attachment 4).
- Modify the options above to reduce the overlay zone to provide a buffer from adjacent residential zones of 100, 300 feet, or greater distance (reference Attachments 2, 3, 5 & 6).
- In conjunction with the above options, the Council may also consider distances from sensitive uses (discussed below) in establishing the appropriate locations.
- Modify any of the above options.

Distance from Sensitive Uses: State law does not require a minimum distance for manufacturing uses from schools or other sensitive land uses (State law does require dispensaries to be located a minimum of 600 feet from schools). Local agencies can be more restrictive and include other sensitive uses such as parks, preschool/daycare centers, and churches. Attachment 7 provides the location of all schools, parks, and commercial daycare centers in the City. The closest public school to the industrial area south of Farroll Road is approximately 1,600 feet, closest public park approximately 1,400 feet, and closest preschool/daycare center approximately 300 feet. However, there are many daycare providers with eight or fewer children in residential zones which are exempt from local regulations. Therefore, it can be assumed that a daycare could be located in any adjacent residential zone, now or in the future. In reviewing ordinances of other agencies, staff did not find examples of minimum distances from sensitive uses for manufacturing uses.

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 10 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 available for viewing at <http://www.grover.org/DocumentCenter/Home/View/2763>.

The Council may consider the following options regarding distance from sensitive uses:

- Determine whether other types of sensitive uses should be included, and if so, what the appropriate distance is from commercial medical marijuana uses.
- Determine if the distance from schools should be greater than 600 feet.
- Modify the above options.

Limitation on Use: The Council may want to consider establishing a maximum number of businesses and/or square footage for manufacturing, distribution, and testing facilities. City staff estimates that the building size for these uses could range from 1,000 to 15,000 square feet, but the demand for these facilities in the City is unknown.

In addition, the Council could consider a minimum distance between manufacturing uses to avoid a concentration of like businesses in a small area. However, this may not be as critical for manufacturing businesses 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). Also, a minimum distance may not be necessary if the number of facilities or total square footage allowed is considered low when compared to the overall area the use is allowed (e.g., if the entire area south of Farroll Road allowed manufacturing uses, but the total square footage is limited to a small area such as 35,000 square feet).

The Council may consider the following options regarding limiting the number or size of a facility:

- Set a maximum amount of square footage for manufacturing, distribution, and testing facilities.
- Set a maximum number of businesses/licenses for manufacturing, distribution, and testing facilities.
- Set a minimum distance between manufacturing, distribution, and testing facilities uses.
- Modify the above options.

If the Council is uncertain on selecting the amount of square footage or the number of facilities, staff would suggest that a lower amount of square feet be used, for example, 35,000 square feet. This could allow for several small manufacturers or a few large manufacturers. If demand is greater than expected, the Council could amend the ordinance in the future to increase the allowed area.

Type of Manufacturing: 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 may consider the following options regarding manufacturing:

- Allow only Level 1 manufacturing.
- Allow both Level 1 and 2 manufacturing.

Staff is recommending only Level 1 manufacturing be allowed to reduce the risks associated with volatile compounds used in Level 2 manufacturing.

Revenues: The revenues from manufacturing, distribution, and testing would be set by Measure L-16, if adopted, at 5% of gross receipts. As a result, it is very difficult to estimate minimum revenues without knowing the gross receipts and the amount of building square footage necessary to produce the estimated revenue. Manufacturing and testing uses would generate gross receipts as a result of the sale or service provided. This could vary significantly based on the volume and price of the product (e.g., name brand recognition vs. generic name product).

However, staff is uncertain how gross receipts would be calculated for the warehousing and distribution of medical marijuana. For example, if the cultivator sends the marijuana to a warehouse for storage and it is subsequently sent to a dispensary, is the gross receipts generated by the distributor based on the storage fee, or does the distributor purchase the medical marijuana and sell it to a dispensary at the wholesale value.

Commercial Cultivation & Nurseries

State law allows for several types of commercial cultivation licenses as follows:

State Licenses for Cultivation

License	Type	Maximum Size
1	Cultivation – specialty outdoors	Up to 5,000 s.f.
1A	Cultivation – specialty indoors	Up to 5,000 s.f.
1B	Cultivation – specialty mixed-light	Up to 5,000 s.f.
2	Cultivation - outdoors	Up to 5,000 s.f.
2A	Cultivation - indoors	5,001-10,000 s.f.
2B	Cultivation – mixed-light	5,001-10,000 s.f.
3	Cultivation - outdoors	One Acre (43,560 s.f.)
3A	Cultivation - indoors	22,000 s.f.
3B	Cultivation – mixed-light	22,000 s.f.
4	Cultivation - Nurseries	

Mixed-light grow facilities allow for a combination of artificial and natural light. These structures can have solid walls with roof panels that allow natural light (reference Attachment 8 for an example of a building design). While mixed-light buildings are more energy efficient than indoor cultivation, the roof design may be more like a greenhouse than an industrial building and might not be considered compatible with the design of other light manufacturing buildings.

Based on previous direction from the Council, the draft ordinance will include both cultivation and nurseries. However, cultivation can occur outdoors, indoors, and within mixed-light buildings.

The Council may consider the following options for cultivation licenses:

- Outdoors.
- Indoors and/or mixed-light.
- Reducing the maximum square footage allowed by the State.
- Modify the above options.

Staff recommends that outdoor cultivation of any type, including greenhouses, be prohibited because of security related issues.

Location: As previously discussed, there are potential locations for cultivation within the City’s industrial zones.

The Council may consider the following options regarding locations for allowable use:

- Allow in specific areas of industrial zones.
- Modify the above options.

Distance from Sensitive Uses: See previous discussion for Sensitive Uses for manufacturing uses. In reviewing ordinances of other agencies, staff did not find examples of minimum distances from sensitive uses for cultivation uses.

The Council may consider the following options regarding distance from sensitive uses:

- Determine whether cultivation uses should have a minimum distance between sensitive uses, and if so, what would be an appropriate distance.
- Modify the above options.

Limitation on Use: The Council may want to consider establishing a maximum number of businesses and/or square footage for cultivation. Most agencies have established a maximum area for cultivation. The Council should also consider the potential water usage for cultivation, which can be water intensive. Based on water demand estimates developed by King City, water consumption for marijuana cultivation amounts to approximately 15 acre-feet per year (ac/ft/yr) for a 22,000 square foot grow area (22,000 square feet is also the maximum area allowed by the State for indoor grows).

The City has an annual water allocation from groundwater and Lopez Lake that amounts to 2,200 acre-feet per year. During years of normal rainfall the City’s water supplies have been very reliable but the recent drought conditions have reduced the City’s Lopez supply and groundwater supplies are in jeopardy of sea water intrusion. Additional water demand during periods of drought will have a short term negative impact on the City’s water supply. The water demand associated with marijuana cultivation is significantly greater than the projected water demand for typical industrial uses. As a result, projections showing excess supply during normal rainfall years will also require reconsideration.

Several sources indicate that indoor grow facilities can recycle between 50% and 90% of total water used for irrigation; however, staff has not verified the typical water consumption for indoor cultivation and it may vary depending on the size and complexity of the facility. The following table provides some comparisons on water demand based on the above:

Water Demand Based on Amount of Recycled Water

Cultivation Area in s.f.	No. of Facilities (assuming max. of 22,000 s.f.)	No Recycled Water	50% Recycled Water	70% Recycled Water	90% Recycled Water
22,000	1	15 ac/ft/yr	7.5 ac/ft	4.5 ac/ft/yr	1.5 ac/ft/yr
44,000	2	30 ac/ft/yr	15 ac/ft/yr	9 ac/ft/yr	3 ac/ft/yr
66,000	3	45 ac/ft/yr	22.5 ac/ft/yr	13.5 ac/ft/yr	4.5 ac/ft/yr
88,000	4	60 ac/ft/yr	30 ac/ft/yr	18 ac/ft/yr	6 ac/ft/yr
110,000	5	75 ac/ft/yr	37.5 ac/ft/yr	22.5 ac/ft/yr	7.5 ac/ft/yr
220,000	10	150 ac/ft/yr	75 ac/ft/yr	45 ac/ft/yr	15 ac/ft/yr

ac/ft/yr = acre-feet per year

The Council could consider the following options related to limitation on the use:

- Set a maximum square footage for cultivation (e.g., a maximum of 110,000 square feet). This approach would likely yield the maximum square footage of cultivation based on current interest.
- Set a limit on the maximum cultivation area by the number of licenses (e.g., a maximum of five cultivators). This approach could yield a range of total square feet of cultivation as one license could have a small cultivation area (e.g., 2,000 s.f.), which is significantly lower than the maximum allowed of 22,000 s.f.
- Require water recycling systems for indoor cultivation at a specific percentage (e.g., 70% water recycling).
- Set a minimum distance between cultivation facilities.
- Modify the options above.

Personal Cultivation: Council's direction was that the draft ordinance pertain to commercial medical marijuana uses and not address personal cultivation. The City currently allows personal cultivation of a maximum 100 square feet per patient consistent with State law, but has no specific regulations on where or how the plants can be grown. In addition, State law allows primary caregivers to grow a maximum of 500 square feet for five patients at one location.

The Police Department is currently experiencing issues related to personal cultivation. The first issue is related to where personal cultivation occurs on residential lots. Cultivation can occur in detached sheds that are less than 120 square feet, which do not require a setback from property lines. This results in cultivation as close as five feet from an adjacent residence which causes issues related to odor and glare from grow lights. Many cities have adopted ordinances requiring personal cultivation to occur within the residence to mitigate these types of issues.

The second issue occurring is the use of residences and the rental of commercial/industrial space for primary caregivers that are cultivating up to 500 square feet as allowed by State law. This is creating odor issues for surrounding properties. It also has the potential of altering the primary use of a residence for cultivation. Other cities have also reported building safety issues related to building alterations and unsafe electrical modification for lighting. If the Council adopts regulations to mitigate odors for commercial cultivation, this would not address primary caregivers that are cultivating in residential, commercial and industrial zones.

The Council may consider the following options regarding personal cultivation:

- Direct staff to include regulations on the size and location for personal cultivation in residential zones to mitigate potential adverse impacts to surrounding neighbors, and; allow primary caregivers to grow within the same area/zone the Council allows for commercial cultivation with the same requirements for odor control.
- Modify the above option.
- Direct staff to not include any revisions to personal cultivation in the draft ordinance.

Revenues: The revenues from commercial cultivation would be set by Measure L-16, if adopted, at \$25/s.f. for the first 5,000 square feet of canopy and \$10/s.f. for the remaining area. As a result, the minimum revenue can be calculated assuming the Council established a limitation based on square feet. For example, every 22,000 square foot license would generate \$295,000 (5,000 s.f. x \$25/s.f. + 17,000 s.f. x \$10/s.f.) annually.

Dispensaries

Dispensaries are retail outlets for the sale of medical marijuana products. It is also common that dispensaries offer deliveries and can also have adjacent cultivation areas.

Location: As previously discussed, there are potential locations within the City’s industrial zones. In addition, a dispensary could be considered in a commercial zone (e.g., West Grand Avenue).

The Council may consider the following options regarding the location of dispensaries:

- Allow in specific areas of industrial zones with deliveries.
- Allow in specific areas of commercial zones with deliveries.
- Modify the above options.

Distance from Sensitive Uses: Unlike manufacturing and cultivation, dispensaries are open to the public allowing patients to patronize the business during the hours of operation. As with some types of businesses, if the use is not properly managed there can be adverse impacts to surrounding properties. In reviewing ordinances of other agencies, staff found most cities have adopted minimum distances from sensitive uses for dispensaries. The most common sensitive uses are schools, parks, residential zones, and other dispensaries, but also included churches, daycare centers, youth-oriented uses, substance abuse treatment centers, and smoke shops. The distances from sensitive uses varied from 300 to 1000 feet, but it was not uncommon to allow for exceptions when it could be demonstrated that no adverse impacts would occur.

State law requires a minimum distance of 600 feet from public and private schools (kindergarten through grade 12). There is a private kindergarten school located at Baden Avenue and South 11th Street; therefore, a minimum distance of 600 feet is required by State law from the school. As previously discussed, the City may increase the minimum distance of 600 feet from schools and also include other sensitive uses as defined by the Council with a minimum distance.

The Council may consider the following options regarding distance from sensitive uses:

- Determine whether other types of sensitive uses should be included, and if so, what would be an appropriate distance from dispensaries.
- Determine if there should be a minimum distance from residential zones and/or residential uses for dispensaries.
- Determine if the distance from schools should be greater than 600 feet required by State law.
- Modify the above options.

Limitation on Use: Most cities that allow dispensaries have established a maximum number that can operate. The typical number of dispensaries range from two to five for most cities. Some have based the number of dispensaries on the city’s population (e.g., one dispensary per 10,000 people). Currently, there are very few cities in California with population less than 50,000 that have allowed dispensaries, so there were few examples that compare to Grover Beach.

The Council may consider the following options on the limitation of use:

- Allow a specific number of dispensaries (e.g., no more than two dispensaries). The locations of the dispensaries could also be based on the areas the Council selects to allow dispensaries (e.g., one in the industrial area and one on West Grand Avenue).
- Set a maximum square feet for each dispensary.
- Determine if dispensaries could include cultivation, as allowed by the State.
- Modify the above options.

Revenues: The revenues from dispensaries would be set by Measure L-16, if adopted, at 5% of gross receipts. As a result, it is very difficult to estimate minimum revenues without knowing the gross receipts. Based on revenues generated in cities that currently tax medical marijuana sales, the estimated gross receipts from a single dispensary could range from \$1,000,000 to \$2,000,000. For example, dispensaries in Santa Cruz, Palm Springs, and Sacramento all gross approximately \$2,000,000 per dispensary. Based on a 5% tax on gross receipts, the revenue to the City from \$2,000,000 in sales would be \$100,000 per year. However, it is difficult to predict the market for a smaller population like San Luis Obispo County. Revenues could also vary significantly based on the quality, service, and name recognition of the product.

Development Permit Process

Staff has reviewed several ordinances to determine how other agencies permit medical marijuana uses. In almost all cases there is some type of discretionary permit (e.g., Use Permit) to approve the location of the use. In addition, there is a regulatory process that requires the owner/operate to demonstrate 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. This regulatory process is ministerial and is often referred to as a “Medical Marijuana Business Permit”. This two-step process separates the land use issues from the legal issues associated with operating a medical marijuana business.

The Council may consider the following options for how development permit applications are processed:

- Require a Use Permit (discretionary permit) for approving the location of the medical marijuana business, and; require a regulatory permit to ensure the operator complies with all State and local laws.
- Modify the above option.
- Designate the Planning Commission as the Review Authority for Use Permit applications or designate the Council as the Review Authority with or without the Planning Commission providing a recommendation to the Council.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Provide comments and/or direction on the content of the draft ordinance to regulate commercial medical marijuana uses; or
2. Provide alternative direction to staff.

RECOMMENDED ACTION

It is recommended that the City Council provide comments and/or direction on the content of the draft ordinance to regulate commercial medical marijuana uses.

FISCAL IMPACT

In addition to staff time in drafting the ordinance, the direct costs are estimated at \$10,000 for the City Attorney’s time and \$20,000 for the consultant’s time for the CEQA document. The total estimated costs of \$30,000 to draft an ordinance are not included in the FY 17 Budget and would need to be funded through General Fund reserves or another funding source.

The adoption of an ordinance regulating commercial medical marijuana uses would allow the City to charge a fee for all staff time spent on future development applications, background checks, facility inspections, and all other time spent by staff related to enforcing the adopted ordinance. This is no different than any other development application where the City can charge a fee that is reasonably related to time spent on the project in order to achieve full cost recovery for services provided.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. A copy of the agenda was sent to parties that have previously expressed interest in commercial medical marijuana activities in the City.

ATTACHMENTS

1. Overlay Zone I & CI Zones south of Farroll Road
2. Overlay Zone I & CI Zones south of Farroll Road with 100-foot Buffer
3. Overlay Zone I & CI Zones south of Farroll Road with 300-foot Buffer
4. Overlay Zone I Zone south of Farroll Road
5. Overlay Zone I Zone south of Farroll Road with 100-foot Buffer
6. Overlay Zone I Zone south of Farroll Road with 300-foot Buffer
7. Potential Sensitive Uses Map
8. Example of Mixed-Light Building Design
9. Zoning Map
10. Industrial Zones Allowable Land Use Table

**EXCERPT OF CITY COUNCIL MEETING MINUTES
MONDAY, AUGUST 15, 2016
AGENDA ITEM #11**

Direction on Proposed Ordinance to Regulate Commercial Medical Marijuana Activities.

Mayor Shoals read the title to the foregoing item and deferred to staff for a report. City Manager Bronson provided introductory remarks regarding development of an ordinance to regulate commercial medical marijuana activities. Community Development Director Buckingham outlined key issues that needed to be addressed in order to prepare a draft ordinance.

Discussion ensued, with staff responding to questions, regarding manufacturing, warehousing/distribution, and laboratory testing of medical marijuana; whether to establish a minimum distance from sensitive uses, such as schools or other sensitive land uses; whether to establish a maximum number of businesses and/or maximum allowable square footage for manufacturing, distribution, and testing facilities; and whether to allow only Level 1 manufacturing or both Level 1 and Level 2 manufacturing. Discussion then focused on similar issues relative to commercial cultivation and nurseries, as well as various options for how development permit applications could be processed. Additional discussion was held regarding the estimated revenue that may be generated from the proposed tax Measure L-16, if approved by the voters.

Mayor Shoals invited comments from those in the audience who wished to be heard on this matter.

The following persons spoke in support of establishing local regulations for commercial medical marijuana activities and responded to questions from the Council regarding operational procedures for dispensaries and manufacturing:

- Damian Martin, legal counsel for Milkman Collective;
- Jay Frame, Pismo Beach resident;
- Cynthia Gonzalez, Elite Care; and
- Steven Weisman (did not state city of residence or business name of his company).

There were no further public comments received at this time. It was noted that there would be additional opportunities in the future to receive public comment as the ordinance was developed.

Action: Upon consensus of the City Council, the following direction was provided to assist staff with preparing an ordinance to establish land use and regulatory requirements with regard to commercial medical marijuana uses:

Manufacturing, warehousing/distribution, laboratory testing, cultivation, transportation, and dispensaries:

- allow in the industrial area located south of Farrell Road as part of an Overlay Zone; and
- include appropriate safety and odor control measures.

Commercial Cultivation & Nurseries:

- allow cultivation within a building, but not to be allowed outdoors;
- allow mixed-light grow facilities that provide for a combination of artificial and natural light;
- allow in the industrial area located south of Farrell Road as part of an Overlay Zone;
- include an increased setback, such as a 100 foot from residential zones, especially adjacent to Calvin Court; and
- include appropriate safety and odor control measures.

Personal Cultivation:

- include regulations to mitigate potential adverse impacts to surrounding properties;
- include standards for indoor cultivation only; and
- include a ministerial permit to assist staff with responding to code enforcement issues.

Development Permit Process:

- establish a two-step development permit process requiring an applicant: 1) obtain a Use Permit (discretionary permit) to determine approval of the proposed location and establish land use requirements; and 2) obtain a regulatory permit (ministerial permit) to demonstrate 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.

Design Standards:

- include design standards for upgrading older industrial buildings.

Additionally:

For staff to research and report back to the Council on the following: 1) whether state law requires dispensaries be a minimum distance of 600 feet from public and private schools; 2) further information on Level 2 manufacturing for cannabis products and how businesses with Level 2 manufacturing for other products address similar health and safety concerns; and 3) further information on the auditing process for commercial cannabis businesses, such as "seed to sale" software.

It was noted that at such time recreational use may become legal, the Council will have the option of determining whether to amend the ordinance.

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: MATTHEW BRONSON, CITY MANAGER
BRUCE BUCKINGHAM, COMMUNITY DEVELOPMENT DIRECTOR**

**SUBJECT: CLARIFICATION OF COUNCIL DIRECTION ON PROPOSED ORDINANCE TO
REGULATE COMMERCIAL MEDICAL MARIJUANA USES**

BACKGROUND

The Municipal Code currently prohibits all commercial medical marijuana activities in the City. On July 5, 2016, the City Council directed staff to start working on a draft ordinance that would regulate commercial medical marijuana uses consistent with the Council's FY 17 Goals and Work Program. At the August 15, 2016 Council meeting, staff received further direction on framing the major components of the draft ordinance. The purpose of this report is to confirm staff's understanding of the Council's direction and seek clarification on outstanding items prior to staff's work in drafting the ordinance this fall for review and a recommendation by the Planning Commission and consideration and adoption by the Council.

DISCUSSION

Below is staff's summary of the Council's direction on the draft ordinance provided at the August 15, 2016 meeting along with the outstanding items where staff is seeking clarification.

Ordinance Purpose

The draft ordinance will include land use and regulatory requirements for commercial medical marijuana uses for manufacturing, warehousing/distribution, laboratory testing, cultivation, transportation, and dispensaries. The ordinance will also address personal cultivation to mitigate potential adverse impacts to surrounding properties. The ordinance will not address adult recreational use as proposed in Proposition 64 (Adult Use of Marijuana Act) on the November 2016 ballot. At such time recreation use becomes legal, the Council can determine if an amendment to the ordinance should occur.

Manufacturing, Warehousing/Distribution, Laboratory Testing

Location: These uses would be allowed in the industrial area located south of Farroll Road as part of an Overlay Zone (reference Attachment 1).

Distance from Sensitive Uses: The Council did not identify any minimum distances from sensitive uses (e.g., schools). This is consistent with state law which does not require a

APPROVED FOR FORWARDING

**MATTHEW BRONSON
 CITY MANAGER**

**Please Review for the Possibility of a
 Potential Conflict of Interest:**

None Identified by Staff Bright
 Shoals Nicolls
 Lee Shah

Meeting Date: September 6, 2016

Agenda Item No. _____

minimum distance for manufacturing uses from schools.

Limitation on Use: The Council did not identify any maximum limit on square footage, the number of businesses, or minimum distance between manufacturing uses.

Type of Manufacturing: This is one of the outstanding issues as the Council requested additional information on Level 1 and Level 2 manufacturing prior to providing direction. The State defines Level 1 manufacturing as being without the use of volatile solvents and Level 2 as being with the use of volatile solvents such as butane, propane, acetone, ethanol, isopropanol, and heptane which are considered to be hazardous materials. The use of volatile solvents allow for a more efficient extraction process than using water and enhance the concentration of the manufactured product (e.g., oils). State statutes create no distinction between the two processes except the reference to nonvolatile vs. volatile. However, this will change as the State establishes their regulations as authorized by State statutes implementing the Medical Marijuana Regulation and Safety Act (MMRSA).

Although none of the current parties that have expressed interest in operating in the city have proposed Level 2 manufacturing, it is likely that there would be future demand based on the limited number of cities that currently allow such manufacturing. Currently, there are numerous industrial type business entities in the City that have a permit for hazardous materials including automotive service, repair and painting, high-tech manufacturing, cabinetry fabrication and water treatment. The County Department of Environmental Health Services is the agency responsible for permitting and regulating the storage and use of hazardous materials.

If the Council decides to allow Level 2 manufacturing in the ordinance, staff would recommend that commercial grade laboratories be required at such facilities. Although these types of laboratories are more expensive to construct, they contain fume hoods and specialized equipment, which reduces the risk of explosion or fire.

Commercial Cultivation & Nurseries

The Council supported cultivation within a building (i.e., indoors) but was opposed to outdoor cultivation. The Council also supported mixed-light grow facilities that allow for a combination of artificial and natural light.

Location: These uses would be allowed in the industrial area located south of Farroll Road as part of an Overlay Zone (reference Attachment 1).

Distance from Sensitive Uses: No minimum distances from sensitive uses were identified by the Council. This is consistent with state law which does not require a minimum distance for cultivation uses from schools.

Limitation on Use: A second outstanding issue is whether the Council would desire a limit on maximum square footage, the number of businesses, or minimum distance between cultivation uses. On a related issue, the Council directed staff to require water conservation at a level up to 90%, if feasible.

If the Council does not establish a limit on the maximum square footage for cultivation, the water supply analysis required by the California Environmental Act (CEQA) would need to assume a reasonable estimate of cultivation area to estimate water usage. If the Council established a maximum square footage, then the CEQA analysis would be capped at the maximum area allowed for cultivation.

The following table provides some comparisons on water demand based on the above:

Water Demand Based on Amount of Recycled Water

Cultivation Area in s.f.	No. of Facilities (assuming max. of 22,000 s.f.)	No Recycled Water	50% Recycled Water	70% Recycled Water	90% Recycled Water
110,000	5	75 ac/ft/yr	37.5 ac/ft/yr	22.5 ac/ft/yr	7.5 ac/ft/yr
220,000	10	150 ac/ft/yr	75 ac/ft/yr	45 ac/ft/yr	15 ac/ft/yr
440,000	20	300 ac/ft/yr	150 ac/ft/yr	90 ac/ft/yr	30 ac/ft/yr
880,000	40	600 ac/ft/yr	300 ac/ft/yr	180 ac/ft/yr	60 ac/ft/yr

ac/ft/yr = acre-feet per year

Consequently, staff is seeking clarification on whether the Council wants to establish a maximum square footage of cultivation area or other use limitations in the draft ordinance.

Personal Cultivation: The Council directed staff to include regulations for personal cultivation to address potential adverse impacts to adjacent properties. The standards will include indoor cultivation only and a ministerial permit so the Police Department would be notified of all legally permitted sites for personal cultivation within the City.

Dispensaries

Location: The Council identified the industrial area south of Farroll Road for dispensaries with some discussion about increased setbacks as discussed below.

Distance from Sensitive Uses: The Council discussed the possibility of a 100 foot setback from residential zones, especially adjacent to Calvin Court. Staff is seeking clarification on if, and where, the Council would like to include a buffer from residential zones and whether that would also include a 100 foot setback from non-conforming residential units in the proposed overlay zone. Staff has provided a map indicating a 100 foot setback from residential zones (reference Attachment 2).

Staff did clarify that state law requires dispensaries be a minimum distance of 600 feet from public and private schools (kindergarten through grade 12). Therefore, a 600 foot setback is required from the existing private kindergarten school located at Baden Avenue and South 11th Street as shown on Attachment 3.

Limitation on Use: Similar to use limitations related to cultivation, the Council did not specifically discuss whether a limitation should be placed on the number of dispensaries that would be allowed to operate in the City. Staff is seeking clarification on whether the Council would like to limit the number of dispensaries allowed to operate.

Development Permit Process

The Council indicated its support for a two-step development permit process. The first step would be to obtain a Use Permit (discretionary permit) that would approve the location and establish land use requirements. The second step would involve obtaining a regulatory permit (ministerial permit) to demonstrate 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. Currently, Use Permits require Planning Commission approval and only are considered by the Council on an appeal. Staff is seeking clarification on whether the Council wants to be the

Review Authority for Use Permit applications related to medical marijuana uses.

Potential Adverse Impacts

The draft ordinance will include appropriate safety measures and odor control measures for all proposed medical marijuana uses.

Design Standards

The Council indicated support for design standards for upgrading older industrial buildings. Staff will include requirements that buildings be painted and/or architecturally enhanced and minimum Development Code requirements be met for landscaping.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Provide clarification and comments on the content of the draft ordinance to regulate commercial medical marijuana uses; or
2. Provide alternative direction to staff.

RECOMMENDED ACTION

It is recommended that the City Council provide clarification and comments on the content of the draft ordinance to regulate commercial medical marijuana uses.

FISCAL IMPACT

As presented in previous staff reports, the costs in drafting the ordinance are estimated at \$10,000 for the City Attorney's time and \$20,000 for the consultant's time for the CEQA document and any other consultants to assist in drafting the ordinance. The total estimated costs of \$30,000 to draft an ordinance are not included in the FY 17 Budget and would need to be funded through General Fund reserves or another funding source.

The adoption of an ordinance regulating commercial medical marijuana uses would allow the City to charge a fee for all staff time spent on future development applications, background checks, facility inspections, and all other time spent by staff related to enforcing the adopted ordinance. This is no different than any other development application where the City can charge a fee that is reasonably related to time spent on the project in order to achieve full cost recovery for services provided. Such a regulatory fee structure is different from the tax measure (Measure L) placed on the November 2016 ballot by the Council which would establish an annual commercial cannabis tax on medical and non-medical marijuana businesses where permissible by law.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. A copy of the agenda was sent to parties that previously expressed interest in commercial medical marijuana activities in the City.

ATTACHMENTS

1. Overlay Zone I & CI Zones south of Farroll Road
2. Overlay Zone with 100 Foot Setback from Residential Zones
3. Overlay Zone with 600 Foot Setback from School

**EXCERPT OF CITY COUNCIL MEETING MINUTES
MONDAY, SEPTEMBER 6, 2016
AGENDA ITEM #9**

Clarification of Council Direction on Proposed Ordinance to Regulate Commercial Medical Marijuana Uses.

Mayor Shoals read the title to the foregoing item and deferred to staff for a report. Community Development Director Buckingham provided a summary of the Council's previous direction with regard to preparing an ordinance that would regulate commercial medical marijuana uses in the industrial area located south of Farrall Road. He also noted items still needing clarification in order to prepare the draft ordinance. Community Development Director Buckingham and City Attorney Koczanowicz then responded to questions from the Council.

Mayor Shoals invited comments from those in the audience who wished to be heard on this matter.

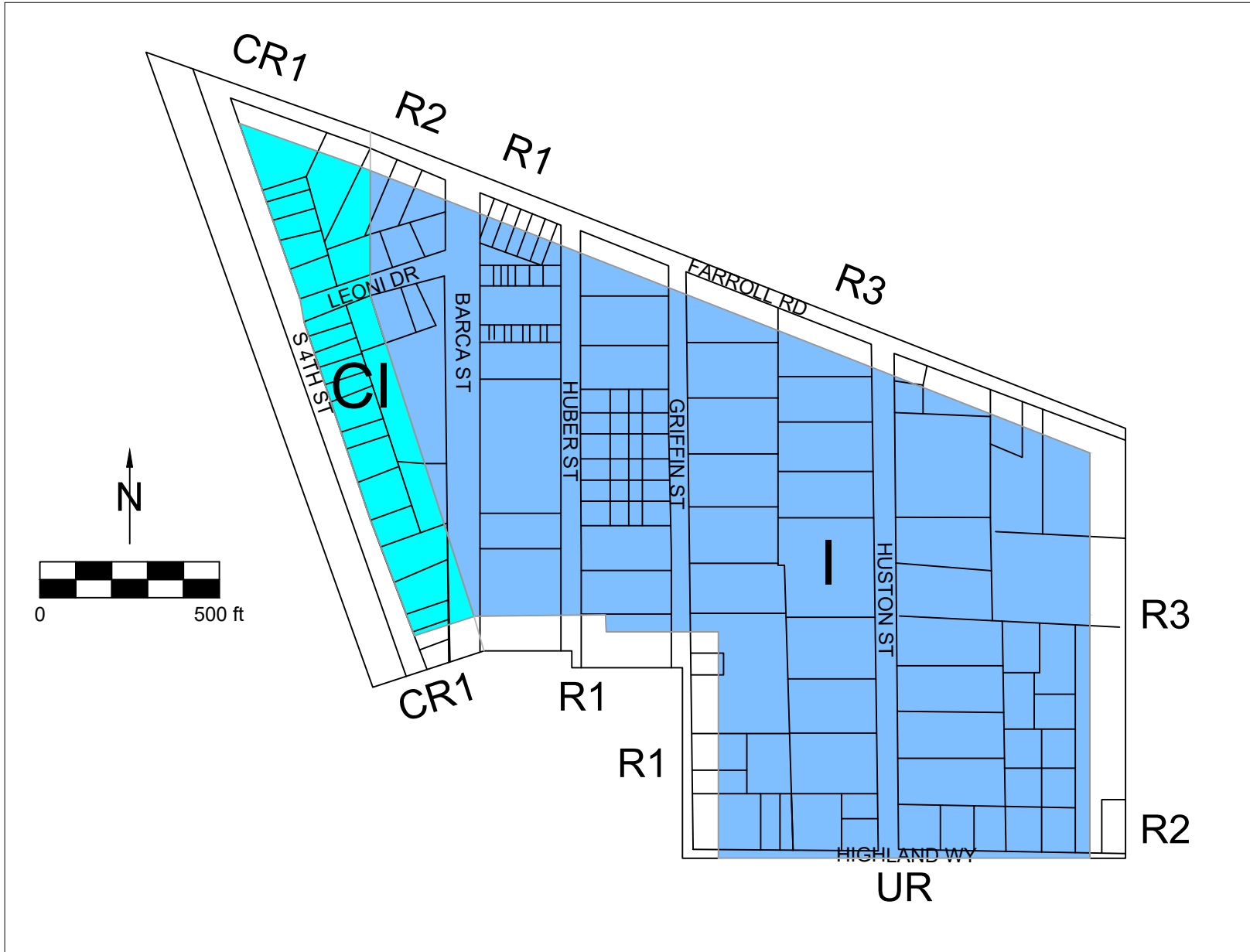
Damian Martin, Milkman Collective, spoke in support of establishing regulations for medical marijuana uses.

There were no further public comments received at this time.

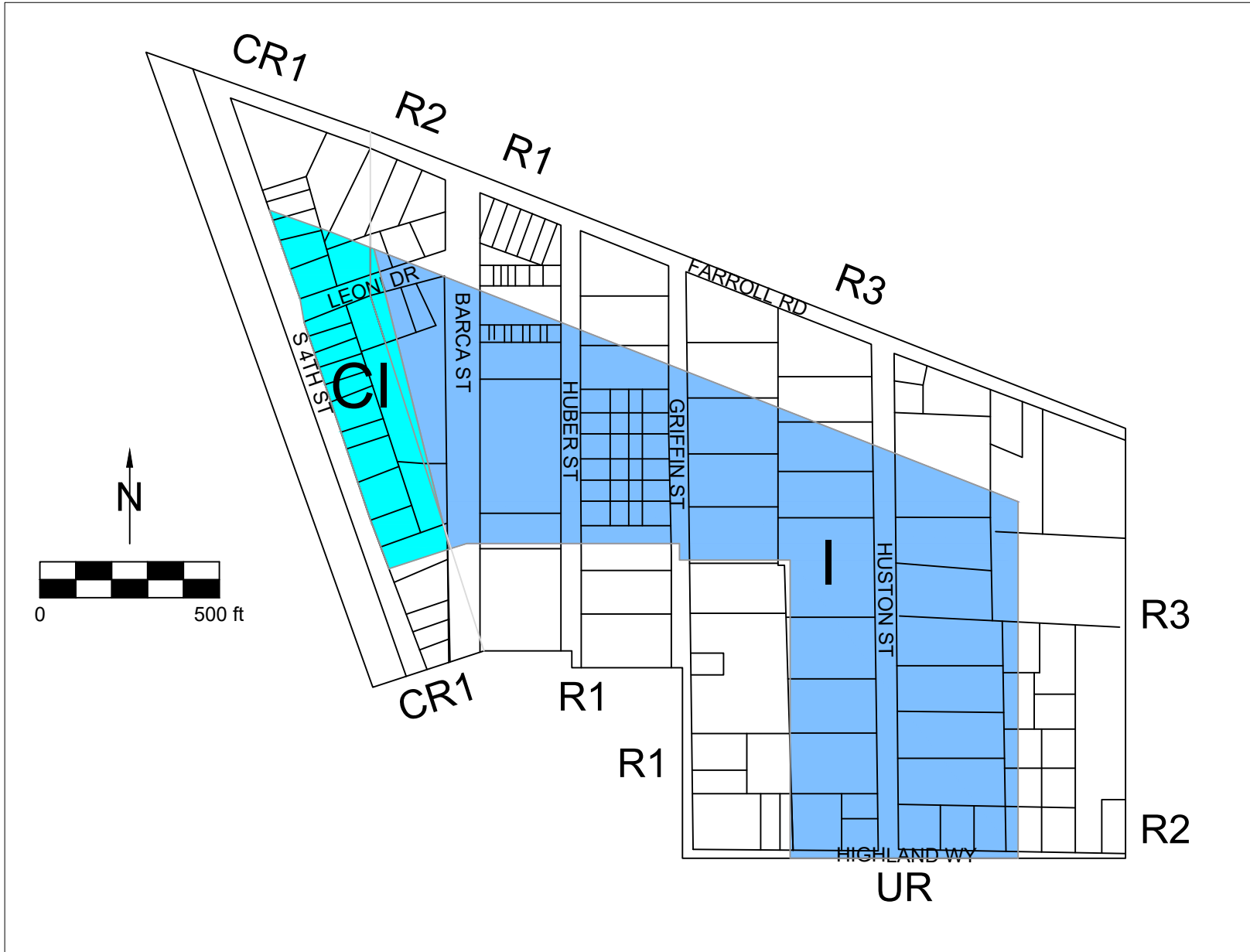
Discussion ensued with Council providing input regarding elements to be included in the proposed ordinance with regards to land use and regulatory requirements for:

- manufacturing, warehousing/distribution, laboratory testing;
- commercial cultivation and nurseries;
- personal cultivation;
- dispensaries;
- a development permit process requiring both a use permit and a regulatory permit; and
- design standards for upgrading older industrial buildings.

Action: Upon consensus, the Council provided comments to staff regarding the content of the draft ordinance to regulate commercial medical marijuana uses.

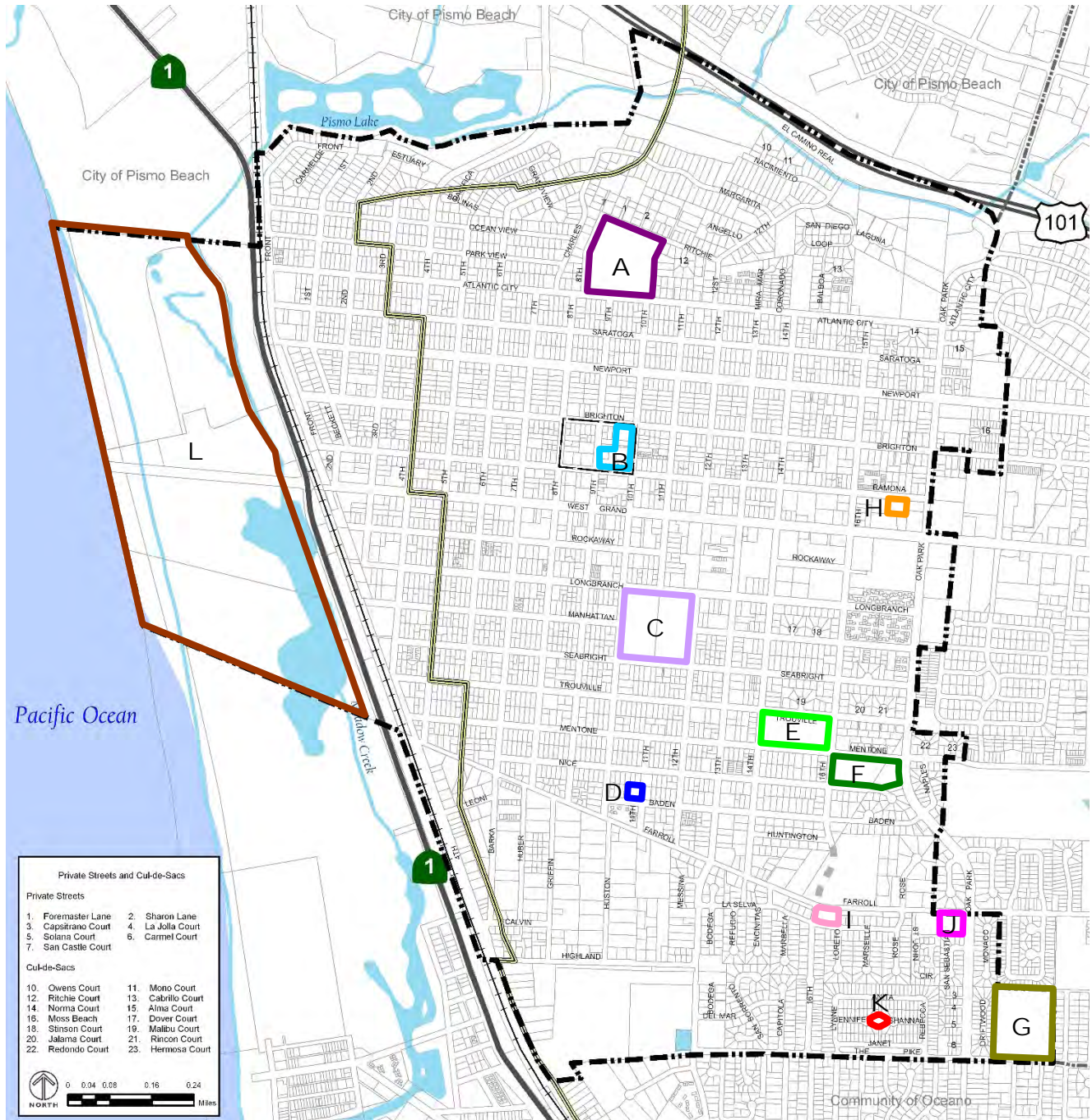


OVERLAY ZONE with 100 foot Setback from Residential Zones



OVERLAY ZONE with 300 foot Setback from Residential Zones

Potential Sensitive Uses Map



- | | | |
|--------|---|--|
| Site A | Grover Heights Elementary School and Park | 770 North 8 th Street |
| B | Ramona Garden Park Center | 993 Ramona Avenue |
| C | Grover Beach Elementary School | 365 South 10 th Street |
| D | Dandy Lion Day Care | 1089 Baden Avenue |
| E | Mentone Basin Park | South 14 th Street and Mentone Avenue |
| F | 16 th Street Park | South 16 th and Mentone Avenue |
| G | Fairgrove Elementary School | 2101 The Pike |
| H | South County Skate Park | 1750 Ramona Avenue |
| I | Hero Community Park | Farroll Road and South 16 th Street |
| J | Costa Bella Park | Farroll Road and Oak Park |
| K | Golden West Park | End of Jennifer Court |
| L | Pismo State Beach | |