



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** February 21, 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: Second Reading and Adoption of Ordinance Nos. 17-03 and 17-04 Amending Articles IX and X of the Grover Beach Municipal Code and Approving a Local Coastal Program Amendment to Allow the Establishment of Commercial Medical Cannabis Uses and Enact a Commercial Cannabis Tax

RECOMMENDATION

Staff recommends that the City Council take the following actions:

1. Conduct a second reading, by title only, and adopt Ordinance No. 17-03 amending Article IX of the Municipal Code to allow the establishment of commercial medical cannabis uses; and
 2. Conduct a second reading, by title only, and adopt Ordinance No. 17-04 amending Article X of the Municipal Code establishing a commercial cannabis tax; and
 3. Adopt the Resolution approving a Local Coastal Program Amendment.
-

BACKGROUND

At the February 6, 2017 Council meeting, the City Council conducted a public hearing, introduced and conducted a first reading, by title only, of an Ordinance amending Article IX of the Municipal Code to allow the establishment of commercial medical cannabis uses and an Ordinance amending Article X of the Municipal Code establishing a commercial cannabis tax.

Staff is requesting that the Council conduct a second reading of both Ordinances, by title only, and adopt the Ordinances (reference Attachments 1 and 2). In addition, staff is requesting the Council adopt a Resolution approving a Local Coastal Program Amendment and authorize staff to submit the Amendment to the California Coastal Commission (reference Attachment 3). Coastal Commission staff estimates it will take approximately three months for formal approval by the Coastal Commission.

As part of the public hearing process, the Council made five minor revisions to the draft ordinance as follows (additions underlined and deletions in ~~striketrough~~):

1. Section 2.90.040.E.2. All dispensaries shall be located a minimum of 100 feet from all residential zones. The 100 feet shall be measured from the ~~property boundary of the dispensary~~ structure to the property boundary of the residential lot.
 2. Section 2.90.040.E.3. All dispensaries may be open to the public and make and receive deliveries between the hours of 9:00 a.m. and 9:00 p.m. All other non-dispensary uses
-

may operate at any time, but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.

3. Section 2.90.040.E.5. All delivery areas and loading/unloading areas shall be conducted within a secured ~~an enclosed and secure~~ building area.
4. Section 2.90.040.E.10. All cultivation and nursery uses shall be within an enclosed building. Cultivation and nursery uses are prohibited outdoors and within greenhouses.
5. Section 2.90.040.F. This section was deleted in its entirety. ~~Signs. No exterior signage shall be allowed for commercial cannabis activity and uses except as follows: Dispensaries shall be limited to 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. In addition, all signage shall conform to Section 3.60 Sign Regulations.~~

As a result of public input and Council discussion on the land use ordinance, the Council provided direction for staff to complete the following tasks in this fiscal year:

- Review additional locations in commercial and industrial zones for commercial cannabis uses and return to Council for further direction within 60 days.
- Five Cities Fire Authority to prepare a detailed analysis on potential impacts of Level 2 manufacturing and return to Council for further direction.
- Staff to prepare design guidelines for new and existing buildings in all industrial zones that would be required as part of a discretionary permit.
- Amend the Grover Business Park Use Permit to allow cultivation/nursery and storage/distribution uses. Staff will work with S&S Homes, the property owner, and schedule a Planning Commission meeting to amend the Use Permit.

ALTERNATIVES

The City Council has the following alternatives:

1. Conduct a second reading, by title only, and adopt Ordinance No. 17-03 amending Article IX of the Municipal Code and a Local Coastal Program Amendment to allow the establishment of commercial medical 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; and
2. Conduct a second reading, by title only, and adopt Ordinance No. 17-04 amending Article X of the Municipal Code establishing a commercial cannabis tax; and
3. Adopt the Resolution approving a Local Coastal Program Amendment; or
4. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Ordinance No. 17-03
2. Ordinance No. 17-04
3. Resolution Adopting a Local Coastal Program Amendment

ORDINANCE No. 17-03

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH
AMENDING THE GROVER BEACH MUNICIPAL CODE SECTIONS 2.40.020, 2.40.030,
6.10.020, AND 9.10.020 OF ARTICLE IX, AND ADDING SECTION 2.90.040 OF ARTICLE IX,
TO ALLOW THE ESTABLISHMENT OF COMMERCIAL CANNABIS USES FOR THE
CULTIVATION, MANUFACTURING, DISPENSATION, TRANSPORTATION, DISTRIBUTION
AND TESTING OF MEDICAL MARIJUANA AND MEDICAL MARIJUANA PRODUCTS**

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

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

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

WHEREAS, the Ordinance requires a Local Coastal Program Amendment because it amends Development Code Sections 2.40, 6.10, and 9.10 that affect the portion of the Coastal Industrial Zone located south of Farroll Road; and

WHEREAS, the Planning Commission held a public hearing on January 11, 2017 and recommended the City Council approve the land use ordinance amendment; and

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

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

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

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

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

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

WHEREAS, in November, 2016, Senate Bill SB 64 was enacted (“The Adult Use of Marijuana Act”) (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 Senate Bill 64 being to establish a comprehensive system to legalize, 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.

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 Adult Use of Marijuana Act, added section 11362.2 of the California Health and Safety Code to allow local agencies to regulate the personal cultivation of living marijuana plants and possession of the marijuana produced by those plants and may limit the total number of plants to six living plants upon the grounds of a private residence at any one time and may impose reasonable regulations; 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, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“MMRSA”) into law; and

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

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

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

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of medical and non-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 and non-medical marijuana-related businesses and personal use will be subject to the zoning and land use regulations of the Overlay Zone in which such uses are established or operate, as set forth in Article IX, Development Code, of the City of Grover Beach Municipal Code; and

WHEREAS, mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this ordinance shall be construed, in anyway, to expand the rights of anyone to use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, testing or consumption of marijuana that is otherwise illegal. It is further the intent of the City Council of the City of Grover Beach to maintain local control over these matters to the fullest extent permitted by law; and

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

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

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

The ordinance amendment will allow commercial medical cannabis uses including manufacturing, storage/distribution, testing labs and retail dispensaries which are all uses that are currently allowed in the Coastal Industrial Zone. The only new use allowed is cultivation and nurseries, which as analyzed in the Negative Declaration, could include a small potential increase in water demand. Based on approximately 6.6 acres within the Coastal Industrial Zone it is estimated that a cultivation area of 16,000 square feet could consume one acre-foot of water per year. The City's current water supply is 2,207 acre feet of water per year (AFY). The City's current water demand is 1,200 AFY. Therefore, the ordinance would have a negligible effect on the City's current demand. The City has an adequate long-term water supply in place to serve the new uses.

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

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

being primarily consumptive, wastewater discharge would remain constant. The City currently has excess demand of 0.20 MGD treatment capacity. Therefore, the City has adequate long-term wastewater treatment capacity in place to serve the new uses.

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

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

2.40.020 Purpose of the Industrial Zones

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

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

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

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

2.40.030 Industrial Zones Allowable Land Uses and Permit Requirements

Table 2.6 Industrial Zones Allowable Land Uses and Permit Requirements				
Land Use	CI ¹	CIC ¹	I	Specific Use Regulations
Industry, Manufacturing & Processing				
High Technology Uses	P	P	P	
Manufacturing, Artisan	P	P	P	Section 4.10.130
Manufacturing/Processing, Heavy	--	--	UP	Section 4.10.130
Manufacturing/Processing, Light	P	P	P	Section 4.10.130
Manufacturing/Processing, Medium	UP	--	UP	Section 4.10.130
Media Production	P	P	P	
<u>[Commercial Cannabis Activity & Uses]</u>	<u>[UP]</u>		<u>[UP]</u>	<u>[Section 2.90.040]</u>
Printing and Publishing	P	P	P	

Table 2.6 Industrial Zones Allowable Land Uses and Permit Requirements				
Land Use	CI ¹	CIC ¹	I	Specific Use Regulations
Recycling – Processing Facilities	--	--	UP	Section 4.10.150
Storage – Warehouse	P	P	P	
Storage – Outdoor	UP	--	UP	Section 4.10.130
Storage – Personal Storage Facility	P	--	P	Section 4.10.140
Storage - Vehicles	UP	--	UP	Section 4.10.130
Wholesaling & Distribution	P	P	P	
Recreation, Education & Public Assembly				
Commercial Recreation Facility - Outdoor	UP	UP	UP	
Health/Fitness Facility	AUP	AUP	AUP	
Meeting Facility, public or private				
≤ 3,000 sf	AUP	AUP	AUP	
> 3,000 sf	UP	UP	UP	
Studio – Art, Dance, Martial Arts	AUP	AUP	AUP	
Public or Quasi-Public Facility	UP	UP	UP	
Specialized Education/Training	UP	UP	UP	
Residential				
Caretaker's Residence	AUP	AUP	AUP	Section 4.10.050
Home Occupation	P	--	P	Section 6.20.070
Live/work Unit	UP	UP	UP	Section 4.10.090
Retail				
Accessory Retail/Service Use	P	P	P	Section 4.10.020
Adult Business	UP	--	--	Section 4.20
Automobile Service Station	UP	--	UP	
Building/Landscape Materials, Indoor	P	--	P	
Building/Landscape Materials, Outdoor	UP	--	UP	Section 4.10.130
Fuel Dealer	UP	--	UP	
General Retail	P	P	P	
Plant Nursery	P	--	P	
Restaurant	UP	UP	UP	
Vehicle Sales	P	--	P	
Services				
ATM	P	P	P	
Animal Boarding	AUP	--	AUP	
Animal Care Facilities	P	--	P	
Business Support Services	P	P	P	
Catering Service	P	P	P	
Equipment Rental	P	--	P	Section 4.10.130
Maintenance Service – Client Site Services	P	P	P	Section 4.10.130
Medical services – Clinic/Urgent Care	P	--	P	
Mortuary/Funeral Home	UP	--	UP	

Table 2.6 Industrial Zones Allowable Land Uses and Permit Requirements				
Land Use	CI ¹	CIC ¹	I	Specific Use Regulations
Office – Business/Service	P	P	P	
Office – Processing	P	P	P	
Office – Professional	P	P	P	
Recycling – Large Collection Facilities	AUP	AUP	AUP	Section 4.10.150
Recycling – Reverse Vending Machine	P	P	P	Section 4.10.150
Recycling – Small Collection Facilities	P	P	P	Section 4.10.150
Repair Services – Large Equipment	P	--	P	Section 3.10.020
Repair Services – Small Equipment	P	P	P	
Vehicle Rental	P	--	P	
Vehicle Repair & Services	AUP	--	P	Section 4.10.130
Transportation & Infrastructure				
Freight Terminal	--	--	UP	
Parking Facility	UP	UP	UP	
Telecommunication Facility	UP	UP	UP	Section 4.40
End Note				
1. Projects located in the Coastal Zone may require a Coastal Development Permit (See Section 6.20.040).				
Legend				
P Permitted Use				
AUP Administrative Use Permit Required				
UP Use Permit Required				
-- Use Not Allowed				

SECTION 3. Section 2.90.040 of Chapter 2, of Article IX, Commercial Cannabis Activity Overlay Zone, is hereby added as follows:

2.90.040 Commercial Cannabis Activity Overlay Zone

A. Purpose. This Section provides standards for Commercial Cannabis Activity and Uses within the Commercial Cannabis Overlay Zone as shown in Figure 2.4. Commercial Cannabis Activity and Uses shall include those uses licensed in Business and Professions Code section 19300.7 and defined in Public Resource Code Section 19300.5 or as modified hereafter and Chapter 18 of Article III of the Grover Beach Municipal Code. No uses licensed under Chapter 5 of Division 10 of the California Business and Professions Code, specifically Section 26050 et seq. shall be allowed within this Commercial Cannabis Activity Overlay Zone nor in any other zone of the City unless otherwise such restriction is precluded by the Control, Regulate and Tax Adult Use of Marijuana Act. The use and possession of live marijuana plants and marijuana produced by the plants as defined within Health and Safety Code section 11362.1 and 11362.2 is subject to Municipal Code Article III, Chapter 18.

These standards apply in addition to the regulatory requirements in Municipal Code Article III Chapter 18 and the State’s licensing requirements.

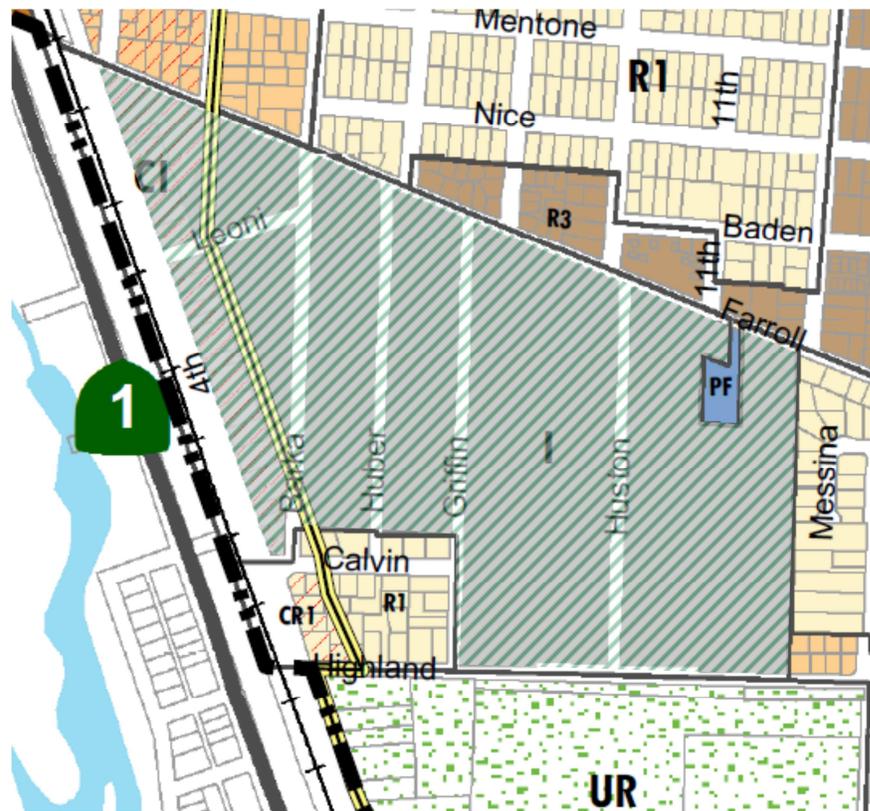


Figure 2.4

- B. Review Authority. The Council is authorized to approve Use Permits for commercial cannabis activity and uses. The Planning Commission shall make a recommendation to the Council.
- C. Permit requirements. A Use Permit shall be approved by the Council to ensure compliance with this Section and a Coastal Development Permit shall be required when located in the Coastal Zone. Approval of a Use Permit does not allow the applicant to operate until a Commercial Cannabis Permit is approved by the City Council in accordance with Municipal Code Article III Chapter 18.
- D. Limitation on number. The maximum number of dispensaries is four. The application process for Council approval and distribution of dispensary permits and other Commercial Cannabis Activity and Uses will be established by resolution.
- E. Development standards. Commercial Cannabis Activity and Uses shall comply with the following standards:
1. All applicable regulatory requirements of Municipal Code Article III Chapter 18.
 2. All dispensaries shall be located a minimum of 100 feet from all residential zones. The 100 feet shall be measured from the property boundary of the dispensary structure to the property boundary of the residential lot.

3. All dispensaries may be open to the public and make and receive deliveries between the hours of 9:00 a.m. and 9:00 p.m. All other non-dispensary uses may operate at any time, but shall only receive deliveries between the hours of 7:00 a.m. and 9:00 p.m.
4. Design standards in Section 2.40.050 and any other adopted design guidelines for industrial zones.
5. All delivery areas and loading/unloading areas shall be conducted within a secured an enclosed and secure building area.
6. Odor control devices and techniques shall be incorporated to ensure that marijuana odors are not detectable from the property boundary and public right-of-way. In multi-tenant buildings marijuana odors shall not be detectable from the building exterior, or from exterior and/or interior common areas such as walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. Odor control systems shall include, but are not limited to, ventilation and exhaust systems that provide sufficient odor absorbing to meet the above requirements.
7. Cultivation and nursery uses shall prepare a Water Recycling Management Plan that demonstrates that irrigation water is recycled to the maximum extent feasible using best management practices. A separate water meter shall be installed for irrigation uses.
8. All manufacturing uses shall be limited to using only the types of solvents and maximum storage limits listed in Municipal Code Article III Chapter 18.
9. An Operations and Security Plan shall be prepared as required by Municipal Code Article III Chapter 18.
10. All cultivation and nursery uses shall be within an enclosed building. Cultivation and nursery uses are prohibited outdoors ~~and within greenhouses~~.
11. Cultivation and nursery uses may use mixed-light buildings when issued a local license consistent with State licensing that allows for mixed-light buildings when no light is visible through the roof and windows of grow areas from dusk to dawn.

~~F. Signs. No exterior signage shall be allowed for commercial cannabis activity and uses except as follows: Dispensaries shall be limited to 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. In addition, all signage shall conform to Section 3.60 Sign Regulations.~~

EG. Required Findings.

1. All Use Permit findings in Section 6.20.090 and all Coastal Development Permit findings in Section 6.20.040, if applicable.
2. The project complies with all applicable provisions of Municipal Code Article III Chapter 18.
3. The applicant has passed the initial background check as required by Municipal Code Article III Chapter 18.

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

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

Table 6.1 Review Authority				
Type of Action	Code Section	Review Authority		
		Director	Commission	Council
General Plan Amendment	7.30	Recommend	Recommend	Decision
Local Coastal Program Amendment	7.30	Recommend	Recommend	Decision ¹
Development Code Amendment	7.30	Recommend	Recommend	Decision
Coastal Development Permit	6.20.040	Recommend ²	Decision	Appeal
Development Permit	6.20.060	Recommend	Decision	Appeal
Use Permit	6.20.090	Recommend	Decision ³	Appeal ³
Variance	6.20.100	Recommend	Decision	Appeal
Administrative Development Permit	6.20.020	Decision	Appeal	Appeal
Administrative Use Permit	6.20.030	Decision	Appeal	Appeal
Home Occupation Permit	6.20.070	Decision	Appeal	Appeal
Temporary Use Permit	6.20.080	Decision	Appeal	Appeal
Interpretations	1.10.050	Decision	Appeal	Appeal

Note:
 1. The decision by the City Council does not take effect until it is certified by the California Coastal Commission.
 2. The Director may approve a Coastal Development Permit in compliance with Section 6.20.040.
3. The City Council shall be the Review Authority for Use Permits for Commercial Cannabis Activity and Uses

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

Commercial Cannabis Activity and Use. The uses are solely limited to the cultivation, nursery, manufacturing, testing laboratories, transportation, delivery, distribution (includes storage), and dispensaries as defined in Public Resources Code Section 19300.5 or as modified hereafter, and Municipal Code Article III Chapter 18.

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

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

SECTION 8. Effective Date. Sections 1, 2, 3, 4, and 5 that are applicable to the Industrial Zone shall become effective and in full force and effect at 12:01 a.m. on the thirty first day after its

final passage. Within fifteen (15) days after its adoption by the City Council, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

SECTION 9. Effective Date. Sections 1, 2, 3, 4 and 5 that are applicable to the Coastal Industrial Zone **shall not become effective until final certification by the California Coastal Commission.** 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 February 6, 2017, and **PASSED, APPROVED,** and **ADOPTED** by the City Council on February 21, 2017, on the following roll call vote, to wit:

AYES:	Council Members –
NOES:	Council Members –
ABSENT:	Council Members –
ABSTAIN:	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. 17-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH, CALIFORNIA ADDING CHAPTER 16 TO ARTICLE X OF THE GROVER BEACH MUNICIPAL CODE ESTABLISHING A COMMERCIAL CANNABIS TAX

WHEREAS, through the passage of Proposition 215, the voters of California authorized the use of cannabis for medical purpose in 1996; and

WHEREAS, the City Council of the City of Grover Beach has adopted medical cannabis permitting regulations to prevent nuisance, provide for effective controls, enable medical cannabis patients to obtain cannabis from safe sources, and wish to provide appropriate licensing and revenue for the City in a manner consistent with state law; and

WHEREAS, every person engaged in business activity in the City of Grover Beach is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, within the current Grover Beach Municipal Code, cannabis businesses are not currently taxed in a classification category; and

WHEREAS, accordingly, the City Council of the City of Grover Beach desires to create Article X, Chapter 16 to create new rates for cannabis businesses as follows: a) Medical Cannabis Cultivation, b) Cultivation Nurseries, c) Medical Cannabis Manufacturing, and d) "Non-Medical" cannabis businesses (whether cultivating or manufacturing other than medical cannabis) where permissible by state and local law; and

WHEREAS, the City of Grover Beach seeks to appropriately regulate cannabis facilities and seeks adequate funding to provide essential public services and all revenues received from the tax will be deposited in the General Fund of the City to be expended for general purposes; and

WHEREAS, the City Council placed Measure L-16 on the ballot at the November 8, 2016 General Municipal Election that proposed the City enact a tax on commercial cannabis businesses which may establish in Grover Beach. The tax would apply to both medical cannabis businesses and non-medical cannabis businesses, if those businesses are allowed under State and local laws. The passage of Measure L would not have any effect on legalization or land use regulation of cannabis activities in the city; and

WHEREAS, this Ordinance would not become operative unless and until a simple majority (50 percent + 1) of the electors voting on this measure vote to approve the commercial cannabis tax.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GROVER BEACH does hereby ordain; and **BE IT ORDAINED BY THE VOTERS OF GROVER BEACH** as follows:

PART 1. Chapter 16 is hereby added to Article X of the Grover Beach Municipal Code to read as follows:

COMMERCIAL CANNABIS BUSINESS TAX

- 101600 Purpose of chapter
- 101601 Tax imposed
- 101602 Definitions
- 101603 Other licenses, permits, taxes, fees or charges
- 101604 Payment of tax does not authorize unlawful business
- 101605 Payment - Location
- 101606 Amount of cannabis tax owed
- 101607 Payment - Time limits
- 101608 Payments and communications made by mail - Proof of timely submittal
- 101609 Payment- When taxes deemed delinquent
- 101610 Notice not required by city
- 101611 Payment - Penalty for delinquency
- 101612 Waiver of penalties
- 101613 Refunds - Credits
- 101614 Refunds and procedures
- 101615 Exemptions - Application - Issuance conditions
- 101616 Exemptions - General
- 101617 Exemptions - Occasional transactions
- 101618 Enforcement - Duties of tax administrator and Police Department
- 101619 Rules and regulations
- 101620 Apportionment
- 101621 Audit and examination of records and equipment
- 101622 Tax deemed debt to city
- 101623 Deficiency determinations
- 101624 Tax assessment - Authorized when - Nonpayment - Fraud
- 101625 Tax assessment - Notice requirements
- 101626 Tax assessment - Hearing -Application and determination
- 101627 Conviction for chapter violation - Taxes not waived
- 101628 Violation deemed misdemeanor - Penalty
- 101629 Severability
- 101630 Effect of state and federal reference/authorization
- 101631 Remedies cumulative
- 101632 Amendment or repeal

Sec. 101600 Purpose of chapter.

This chapter shall be entitled the "Commercial Cannabis Business Tax" and is enacted solely to raise revenue for the general governmental purposes for the City and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and used for the purposes consistent with the general fund expenditures of the City.

Sec. 101601 Tax imposed.

There is established and imposed, a commercial cannabis business tax at the rate set forth in this chapter.

Sec. 101602 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(A) "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

(B) "Cannabis" means all parts of the plant *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.

(C) "Cannabis business" or "medical marijuana business" or "non-medical marijuana business" means any commercial business activity not limited to, testing, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of Cannabis and any ancillary products in the city, whether or not carried on for gain or profit which is permitted by both State and local law.

(D) "Cannabis Business Tax", "Business tax" or "Cannabis tax" means the tax due for engaging in Commercial Cannabis business in the city.

(E) "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous on any one site. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

(F) "Cultivation Facility" or "Grow Site" shall mean the square footage of any place or location where cannabis or any of its derivatives is cultivated, grown, harvested, packaged processed or stored.

(G) "Distributor" or "Distribution" or "Distribution Facility" shall mean a person or facility licensed by the State to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(H) "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

(I) "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a Cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

(1) Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;

(2) Such person or person's employee owns or leases real property within the City for business purposes;

(3) Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

(4) Such person or person's employee regularly conducts solicitation of business within the City;

(5) Such person or person's employee performs work or renders services in the City on a regular and continuous basis involving more than five (5) working days per year;

(6) Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes. The foregoing specified activities shall not be a limitation on the meaning of "engaged in business".

(J) "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or represents to a government agency or to the public that such person is engaged in a Cannabis business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

(K) "Gross Receipts" except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

(1) Cash discounts allowed and taken on sales;

(2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

(3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

(4) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business; Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

Cash value of sales, trades or transactions between departments or units of the same business;

Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

(5) Transactions between a partnership and its partners;

(a) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

(b) The voting and non-voting stock of which is owned at least eighty (80%) percent by such other corporation with which such transaction is had; or

(c) Which owns at least eighty (80%) percent of the voting and non-voting stock of such other corporation; or

(d) At least eighty (80%) percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;

(6) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (8) above;

(7) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar (\$1);

(8) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

(L) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, 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 and that holds a valid local license or permit.

(M) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(N) "Sale" means and includes any sale, exchange, or barter.

(O) "Square Foot" or "Square Footage" shall mean the maximum canopy area allowed under permit classification by the local agency and/or licensed by the State and shall be the basis for the tax rate calculations for cultivation.

(P) "Tax Administrator" or "administrator" means the Finance Director or such other designated by the City Manager to administer this chapter.

(Q) "Transporter" means a person issued a state license and local license to transport medical or non-medical cannabis or medical non-medical cannabis products where permitted by both State and local law in an amount above the threshold determined by the state permitting agency between facilities that have been issued a state license.

(R) "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 purpose of conducting commercial cannabis activity authorized by the state.

(S) "Testing Laboratory" shall mean a facility, entity, or site in the state and within City limits, that offers or performs tests of medical cannabis or medical cannabis products and is an accredited body by the state and is independent from all other persons involved in the medical cannabis industry.

Sec. 101603 Other licenses, permits, taxes, fees or charges.

Nothing contained in this Chapter 16 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license, land use entitlement or permit required by, under or by virtue of any provision of any other title or chapter of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall

be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code.

Sec. 101604 Payment of tax does not authorize unlawful business.

(A) The payment of a cannabis tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any Cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any Cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Cannabis business is in violation of any law.

(B) No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city.

Sec. 101605 Payment - Location.

The tax imposed under this chapter shall be paid to the administrator in the Grover Beach Finance Department on or before the prescribed date during regular city business hours.

Sec. 101606 Amount of cannabis tax owed.

Every person or entity whether it is a “not for profit”, a “nonprofit” or a “Non-Profit Organization” as defined in this Section, or a for-profit entity who is engaged in a Commercial Cannabis Cultivation business in the city shall pay an annual cannabis tax on medical marijuana and non-medical marijuana where it is permissible by both state and local law.

The initial tax for both medical and non-medical marijuana shall be set at a rate of twenty-five dollars (\$25) per square foot of permitted or licensed canopy space for the first 5,000 square feet and then ten dollars (\$10) per square foot of canopy space for the remaining space licensed by the City for cultivation of marijuana.

Every person or entity listed herein that conducts any other cannabis business shall pay a five (5%) percent tax on all gross receipts of the business for medical marijuana and ten (10%) percent tax on all gross receipts of the business for non-medical marijuana.

Beginning on January 1, 2020 and on January 1, of each succeeding year thereafter, the amount of tax imposed by this Section may be adjusted up to the equivalent to the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics; if the City Council by ordinance increases any such tax however related to the “CPI”, no adjustment shall decrease any tax imposed by this Section.

All tax methodology based upon taxable square footage shall be equal to the maximum square footage allowed by permit type issued by the City and/or State. In no case shall the canopy square footage not utilized for the permit type be deducted for the purpose of determining the tax.

Sec. 101607 Payment-Time limits.

The cannabis tax imposed by this chapter shall be due and payable as follows:

(A) Each person owing a Commercial Cannabis Cultivation Tax under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare a tax statement and remit to the administrator the tax due on the total square footage of canopy space subject to the tax. The square footage tax due shall be paid based on the type of cultivation permit issued by the state and/or the City and the maximum square footage so permitted or licensed. The tax will not be prorated or adjusted for reduction in the square footage not utilized by the business. Each business shall pay on or before the last day of the month following the close of each calendar quarter in four (4) equal installments of the annual tax due. The City may at its discretion determine other methodologies in determining the payment of such tax in order to promulgate collection of said tax in order to reduce the burden of collection which may also include the form of payment in which the city may except for such tax.

(B) Each person conducting any other commercial cannabis business under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare a tax statement to the administrator of the total gross receipts and the amount of taxed owned for the preceding calendar quarter. At the time the tax statement is filed, the full amount of the tax owed for the preceding calendar quarter shall be remitted to the administrator.

(C) All tax statements shall be completed on forms authorized by the administrator.

(D) Tax statements and payments for all outstanding taxes owed the city are immediately due to the administrator upon cessation of business for any reason.

Sec. 101608 Payments and communications made by mail - Proof of timely submittal.

Whenever any payment, statement, report, request or other communication received by the administrator is received after the time prescribed by this chapter for the receipt thereof, but there is an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this chapter for the receipt thereof, or whenever the administrator is furnished substantial proof that the payment, statement, report, request or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the administrator may regard such payment, statement, report, request or other communication as having been timely received. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the city is open to the public.

Sec. 101609 Payment - When taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified in Section 101607.

Sec. 101610 Notice not required by city.

The administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Sec. 101611 Payment-Penalty for delinquency.

(A) Any person who fails or refuses to pay any cannabis tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

(1) A penalty equal to twenty-five (25%) percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and

(2) An additional penalty equal to twenty-five (25%) percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties, calculated at the rate established by resolution of the City Council.

(3) Interest shall be applied at the monthly rate on the first day the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

(B) Whenever a check is submitted in payment of a cannabis tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.

(C) The cannabis tax due shall be that amount due and payable from the first date on which the person was engaged in Cannabis business in the city, together with applicable penalties and interest calculated in accordance with Subsection (A) above.

Sec. 101612 Waiver of penalties.

The administrator may waive the first and second penalties of twenty-five (25%) percent each imposed upon any person if:

(A) The person provides evidence satisfactory to the administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent cannabis tax and accrued interest owed the city prior to applying to the administrator for a waiver.

(B) The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four-month period.

Sec. 101613 Refunds-Credits.

(A) No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 101614.

(B) No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution or other termination of a business.

(C) Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's cannabis taxes for the next calendar quarter.

Sec. 101614 Refunds and procedures.

(A) Whenever the amount of any cannabis tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by

the city under this chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the administrator within one year of the date the tax was originally due and payable, and the provisions of Chapter 9, Article 2 of the Grover Beach Municipal Code are satisfied.

(B) The administrator or the administrator's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the administrator to do so. In the event that the cannabis tax was erroneously paid and the error is attributable to the city, the city shall refund the amount of tax erroneously paid up to one year from when the error was identified.

Sec. 101615 Exemptions - Application - Issuance conditions.

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the administrator and shall furnish such information and make such affidavits as may be required by the administrator.

Sec. 101616 Exemptions - General.

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law.

Sec. 101617 Exemptions - Occasional transactions.

(A) The provisions of this chapter shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five (5) days during any calendar year.

(B) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting business and who is not exempt as provided in Subsection (A) of this section, the cannabis tax payable by such person may be apportioned by the administrator in accordance with Section 101620.

Sec. 101618 Enforcement - Duties of tax administrator and police department.

It shall be the duty of the administrator or his/her designee to enforce each and all of the provisions of this chapter, and the police department shall render such assistance in the enforcement of this chapter as may from time to time be required by the administrator.

Sec. 101619 Rules and regulations.

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

Sec. 101620 Apportionment.

(A) None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be in violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California.

(B) If any case where a cannabis tax is believed by a taxpayer to place an undue burden upon interstate commerce or be in violation of such constitutional clauses, the taxpayer may apply to the administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one (1) year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

(C) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

(D) Should the administrator determine that the gross receipt measure of tax to be the proper basis, the administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the administrator.

Sec. 101621 Audit and examination of records and equipment.

(A) The administrator, or its designee, shall have the power to audit and examine all books and records of persons engaged in Cannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in Cannabis business, and, where necessary, all equipment, of any person engaged in Cannabis business in the city, for the purpose of ascertaining the amount of cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant 101624 through 101626 of any taxes estimated to be due.

(B) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the administrator shall have the right to inspect at all reasonable times.

Sec. 101622 Tax deemed debt to city.

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person carrying on any Cannabis Business without first having paid such tax shall be liable in an action in the name of the

city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

Sec. 101623 Deficiency determinations.

If the administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 101624 through 101626.

Sec. 101624 Tax assessment - Authorized when - Nonpayment - Fraud.

(A) Under any of the following circumstances, the administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

(1) If the person has not filed any statement required under the provisions of this chapter;

(2) If the person has not paid any tax due under the provisions of this chapter;

(3) If the person has not, after demand by the administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter;

(4) If the administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

(B) The notice of assessment shall separately set forth the amount of any tax known by the administrator to be due or estimated by the administrator, after consideration of all information within the administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

Sec. 101625 Tax assessment - Notice requirements.

The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the administrator for the purpose of receiving

notices provided under this chapter; or, should the person have no address registered with the administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

Sec. 101626 Tax assessment - Hearing - Application and determination.

Within ten (10) days after the date of service the person may apply in writing to the administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the administrator shall cause the matter to be set for hearing before him or her not later than thirty-five (35) days after the receipt of the application, unless a later date is agreed to by the administrator and the person requesting the hearing. Notice of such hearing shall be given by the administrator to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the administrator should not be confirmed and fixed as the tax due. After such hearing the administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 101625 for giving notice of assessment.

Sec.101627 Conviction for chapter violation - Taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

Sec.101628 Violation deemed misdemeanor - Penalty.

Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Sec.101629 Severability.

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

Sec.101630 Effect of state and federal reference/ authorization.

(A) Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not

require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

(B) To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

Sec.101631 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Sec.101632 Amendment or repeal.

Chapter 16 of Article X of the City of Grover Beach Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter. The people of the City of Grover Beach affirm that the following actions shall not constitute an increase of the rate of a tax:

(A) The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the City Council has acted to reduce the rate of the tax;

(B) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;

The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or

The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

PART 2. 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 3. 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 February 6, 2017 and **PASSED, APPROVED, and ADOPTED** by the City Council on February 21, 2017 on the following roll call vote, to wit:

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

PASSED, APPROVED, and ADOPTED by 70.59 percent of the Voters of the City of Grover Beach on Tuesday, November 8, 2016.

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

JOHN P. SHOALS, MAYOR

ATTEST:

DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

DAVID P. HALE, CITY ATTORNEY

RESOLUTION NO. 17-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH
AUTHORIZING AND DIRECTING THE COMMUNITY DEVELOPMENT DIRECTOR
TO SUBMIT THE LOCAL COASTAL IMPLEMENTATION AMENDMENT
ASSOCIATED WITH ORDINANCE NO. 17-03 TO THE
CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION**

WHEREAS, the City Council provided direction for staff to prepare an ordinance to allow commercial medical cannabis uses in a portion of the Coastal Industrial Zone located south of Farroll Road; and

WHEREAS, the Ordinance requires a Local Coastal Program Amendment because it is amending Development Code Sections 2.40, 6.10, and 9.10; and

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

WHEREAS, the Local Coastal Program Amendment is intended to be carried out in a manner that is fully in conformity with the Coastal Act; and

WHEREAS, the Planning Commission held a public hearing on January 11, 2017 and recommended the City Council approve the land use ordinance amendment; and

WHEREAS, the City Council at its meeting on February 6, 2017 conducted first reading of the Commercial Medical Cannabis Land Use Ordinance and adopted the Land Use Ordinance at its meeting on February 21, 2017.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Grover Beach **DOES HEREBY AUTHORIZE AND DIRECT** the Community Development Director to submit amendments to Sections 2.40, 6.10, and 9.10 of Article IX Development Code associated with Ordinance No. 17-03, to the California Coastal Commission for final certification.

On motion by Council Member _____, seconded by Council Member _____, and on the following roll-call vote, to wit:

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

the foregoing RESOLUTION NO. 17-__ was **PASSED, APPROVED, and ADOPTED** at a regular meeting by the City Council on February 21, 2017.

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

JOHN P. SHOALS, MAYOR

Attest:

DONNA L. MCMAHON, CITY CLERK