

July 31, 2023

DETERMINATION OF THE CITY PLANNER THAT MEDICINAL CANNABIS DELIVERY SERVICE BUSINESSES ARE SIMILAR IN USE AS STORAGE, WHOLESALE, AND DISTRIBUTION FACILITIES, AS PERMITTED UNDER THE PLANNED-INDUSTRIAL (P-M) ZONE

BACKGROUND

The state legislature passed, and Gov. Gavin Newsom signed into law in 2022 Senate Bill (SB) 1186, the Medicinal Cannabis Patients' Right of Access Act (MCPARA). Among other requirements, the MCPARA established that beginning January 1, 2024, jurisdictions are barred from adopting or enforcing any regulations that prohibit or have the effect of prohibiting the delivery of medicinal cannabis to patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner.¹

Pursuant to the MCPARA, local governments may impose reasonable regulations related to zoning requirements that are consistent with SB 1186, security or public health and safety requirements, licensing requirements, the imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction, and regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under state law.

In response, the city is in the process of amending chapter 8.90, adding chapter 8.95 and repealing section 5.04.160 of the Carlsbad Municipal Code (CMC) to allow non-storefront retail medicinal cannabis delivery services businesses consistent with the MCPARA (Attachment A). Among the proposed amendments, a new use type is being introduced, medicinal cannabis delivery services business, which is defined as follows:

“Medicinal cannabis delivery service business” means a business or operation, whether for profit or nonprofit, whose premises are closed to the public and which sells medicinal cannabis and/or medicinal cannabis products exclusively by delivery, which requires a state license (Type 9-Non-storefront Retailer) under Business and Professions Code Section 26000 et seq. and which requires a medicinal cannabis delivery service license issued by the City of Carlsbad to legally operate. This definition does not include any storefront component whereby customers purchase or pick up medicinal cannabis or medicinal cannabis products at the physical premises of a retail establishment.”

CONCLUSION

Title 21 (zoning ordinance) of the CMC does not specifically list medicinal cannabis delivery service business as a permitted use type. Considering that the function and sole purpose of these businesses is limited to the delivery of medicinal cannabis and medicinal cannabis products to patients or their primary caregivers, the City Planner has determined (should the above referenced code amendment be adopted) that pursuant to CMC Section 21.34.020.C, medicinal cannabis delivery service business are similar to “storage, wholesale, and

¹ SB 1186 only prevents jurisdictions from prohibiting medicinal cannabis deliveries --- the city may continue to enforce its prohibition on all other aspects of medicinal cannabis including cultivation, manufacturing, testing, and sales. Additionally, jurisdictions retain their local control over adult-use (non-medicinal) cannabis businesses --- the city may continue to enforce its complete prohibition of all aspects of non-medicinal cannabis including cultivation, delivery, manufacturing, testing, and sales.

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distribution facilities,” which are a permitted use in the city’s Planned-Industrial (P-M) zone. The City Planner found that a medicinal cannabis delivery service business falls within the intent and purpose of the zone and is substantially similar to the specified permitted use. This determination does not modify any other requirements for any other Discretionary Actions that may be needed to process a land development application, or other requirements of other sections of the Carlsbad Municipal Code.

This determination may be appealed to the Planning Commission pursuant to CMC §21.54.140 within ten days of the date of this letter. Appeals must be submitted in writing to the Community Development Department; attention City Planner at 1635 Faraday Avenue, Carlsbad, 92008 along with a payment of \$786. Please be advised that the filing of such appeal within such time limit does not stay any requirements, agreements, deadlines, or enforcement action that may otherwise apply to this project or property.

If you have any questions regarding this matter, please feel to contact me at 442-339-2717 or via email at Eric.Lardy@Carlsbadca.gov

Sincerely,

A handwritten signature in black ink that reads "Eric Lardy". The signature is written in a cursive, flowing style.

ERIC LARDY, AICP
City Planner

Attachments:

A – Draft Medicinal Cannabis Delivery Service Business Ordinance

c: Jeff Murphy, Community Development Director
Mike Strong, Assistant Community Development Director
Rob Efird III, Principal Planner