

CEQA DETERMINATION OF EXEMPTION

Subject: This California Environmental Quality Act (CEQA) Determination of Exemption is in compliance with Carlsbad Municipal Code Section 19.04.060. An appeal to this determination must be filed in writing with the required fee within ten (10) calendar days of the City Planner's decision consistent with Carlsbad Municipal Code Section 21.54.140.

Project Number and Title: An ordinance amending chapter 8.90, adding chapter 8.95, and repealing section 5.04.160 of the Carlsbad Municipal Code to allow non-storefront retail medicinal cannabis delivery businesses consistent with the Medicinal Cannabis Patients' Right to Access Act (Senate Bill 1186)

Project Location - Specific: Citywide

Project Location - City: Carlsbad **Project Location - County:** San Diego

Description of Project: The proposed action seeks to amend chapter 8.90 (cannabis) and add new chapter 8.95 (medicinal cannabis delivery service business) to Title 8 (public peace, morals, and safety) and amend chapter 5.04 (licensing businesses generally) of Title 5 (business licenses and regulations) of the Carlsbad Municipal Code to implement Senate Bill 1186, referred to as the Medicinal Cannabis Patients' Right of Access Act. Pursuant to SB 1186, which amended Chapter 26 (commencing with Section 26320) of Division 10 of the Business and Professions Code, starting January 1, 2024 local jurisdictions are prohibited 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. The state code allows local jurisdictions to reasonable standards to address security and health and safety concerns. Consistent with SB 1186, the proposed amendments to the Carlsbad Municipal Code will allow the establishment of non-storefront retail medicinal cannabis delivery businesses in the city subject to zoning requirements, security/public health and safety requirements, licensing requirements and compliance with restrictions imposed on cannabis businesses by state law or regulations issued by the California Department of Cannabis Control (DCC).

Name of Public Agency Approving Project: City of Carlsbad

Name of Person or Agency Carrying Out Project: City of Carlsbad, Community Development

Name of Applicant: Jeff Murphy, Community Development Director

Applicant's Address: 1635 Faraday Avenue, Carlsbad, CA 92008

Applicant's Telephone Number: 442-339-2783

Name of Applicant/Identity of person undertaking the project (if different from applicant above): N/A

Exempt Status: (Check One)

- Ministerial (Section 21080(b)(1); 15268);
- Declared Emergency (Section 21080(b)(3); 15269(a));
- Emergency Project (Section 21080(b)(4); 15269 (b)(c));
- Categorical Exemption - State type and section number: _____
- Statutory Exemptions - State code number: Section 15268
- Common Sense Exemption (Section 15061(b)(3))

Reasons why project is exempt: The proposed action that is being considered is covered by the general rule under State CEQA Guidelines 15061(b)(3), where the activity is covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. 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. Beginning Jan. 1, 2024, jurisdictions are barred from adopting or enforcing any regulation that directly or indirectly prohibits delivery of medicinal cannabis to patients or caregivers in the city.

The specified code amendments associated with this action will create a regulatory scheme allowing the establishment of medicinal cannabis delivery service businesses¹ within the City of Carlsbad subject to various structure and use standards, site operating standards, and delivery operations standards to address potential security and public health and safety concerns, consistent with SB 1186.

In a letter dated July 31, 2023, the City Planner determined pursuant to Carlsbad Municipal Code Section 21.34.020.C. that a medicinal cannabis delivery business is similar to "storage, wholesale, and distribution facilities," which are a permitted use in the city's Planned-Industrial (P-M) zone; no discretionary action required from the city to authorize the use. The City Planner found that a medicinal cannabis delivery business falls within the intent and purpose of the zone and is substantially similar to the specified permitted use.

To ensure that medicinal cannabis delivery businesses meet proposed security and public health and safety requirements and conditions, issuance of a medicinal cannabis delivery service business license must be obtained prior to establishment of business operations. Considering the amount and type of review required for a medicinal cannabis delivery service business license application, the licensing review process was modeled after the licensing schemes applied to escort services and massage services, which are a form of business license that the city issues. Building permits and business licenses are statutorily exempt from the California Environmental Quality Act pursuant to Cal. Code of Regulations Title 14, Section 15268.

Additionally, prior to issuance of a city medicinal cannabis delivery service business license, applicants must first secure approval of a Type 9: non-storefront retailer (delivery only) license from the California Department of Cannabis Control (DCC). Since the city's permitting process is ministerial and exempt from the preparation of a CEQA document, DCC acts as lead agency and shall have the primary responsibility and discretionary authority to ensure that the proposed medicinal cannabis delivery service business complies with CEQA prior to the state's issuance of the Type 9: non-storefront retailer (delivery only) license.

¹ "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 (delivery only) under Business and Professions Code Section 26000 et seq. and which requires a medicinal cannabis delivery service permit 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.

None of the potential exceptions to the use of Categorical Exemptions as defined by Section 19.04.070 B of the Carlsbad Municipal Code and CEQA guidelines Section 15300.2 apply.

Lead Agency Contact Person: Jeff Murphy, CD Director

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Eric Lardy

ERIC LARDY, City Planner

7/31/23

Date

