CITY COUNCIL AGENDA

MAYOR AND COUNCIL WORKSHOP

Wednesday, June 20, 2018
1:00 p.m.

ADJOURNED MEETING
City Council Chambers
300 North Coast Highway

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL

CONSENT ITEMS:
1. City Council/ Harbor/ CDC/ OPFA: Approval to waive reading of the text of all ordinances and resolutions considered at this meeting and provide that ordinances shall be introduced after a reading only of the title(s)

PUBLIC HEARING ITEMS:
2. City Council: Introduction of an ordinance amending the Oceanside Comprehensive Zoning Ordinance (aka 1992 OZO) to update regulations concerning medical cannabis uses pursuant to Council direction on April 11, 2018, as follows:

   1) eliminate zoning ordinance text limiting medical cannabis cultivation facilities and medical cannabis nurseries to 22,000 square feet per legal lot, existing at the time of adoption of Ordinance 18-OR0199-1, and retain the 20% (max) lot coverage; 2) eliminate the 1,000 foot locational requirement buffer between all medical cannabis cultivation facilities and/or between all medical cannabis nurseries; 3) allow for waiver of locational requirements for medical cannabis facilities pursuant to Section 3605 of Article 36; and 4) clarify that the land use classification definition for medical cannabis manufacturing excludes propagation of medical cannabis

   A) Report by Jonathan Borrego, Development Services Director
   B) Discussion
   C) Recommendation – Introduce the ordinance

Continued
GENERAL ITEMS:

3. City Council: Receive a report from Frank McCoy, Police Chief, regarding potential medical cannabis dispensary impacts, and provide direction to staff
   A) Report by Frank McCoy, Police Chief
   B) Discussion
   C) Recommendation – provide direction to staff

4. Public Communication on City Council Matters (off-agenda items)

ADJOURNMENT

The next regularly scheduled meeting is at 3:30 p.m. on Wednesday, June 20, 2018

AGENDA POSTING AND MATERIALS
The agenda has been posted at least 72 hours prior to the meeting at the Civic Center Plaza, 300 North Coast Highway. The agenda may also be inspected at the City Clerk’s Office at 300 North Coast Highway. Persons requiring assistance or auxiliary aids in order to participate may contact the City Clerk at 300 North Coast Highway, Oceanside, CA, telephone (760) 435-3000 at least 24 hours prior to the meeting.
DATE: June 20, 2018

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: PUBLIC HEARING TO CONSIDER MINOR AMENDMENTS TO THE COMPREHENSIVE ZONING ORDINANCE CONCERNING MEDICAL CANNABIS REGULATIONS PURSUANT TO COUNCIL DIRECTION FROM APRIL 11, 2018

SYNOPSIS

Staff recommends that the City Council introduce an ordinance amending the Oceanside Comprehensive Zoning Ordinance (aka 1992 OZO). The purpose of the amendment (ZA18-00003) is to update regulations concerning medical cannabis uses as follows: 1) eliminate zoning ordinance text limiting medical cannabis cultivation facilities and medical cannabis nurseries to 22,000 sq. ft. per legal lot, existing at the time of adoption of ordinance 18-OR0199-1, and retain the 20% (max) lot coverage; 2) eliminate the 1,000 ft. locational requirement buffer between all medical cannabis cultivation facilities and/or between all medical cannabis nurseries; 3) allow for waiver of locational requirements for medical cannabis facilities pursuant to Section 3605 of Article 36; and 4) clarify that the land use classification definition for medical cannabis manufacturing excludes propagation of medical cannabis.

BACKGROUND

In 1996 California voters approved Proposition 215, the Compassionate Use Act of 1996 which allowed the use of marijuana (aka cannabis) for medical purposes. In 2015 the California legislature enacted the Medical Marijuana Regulatory & Safety Act (MMRSA) which established a licensing and regulatory framework for commercial cultivation, manufacturing, transportation, distribution, and sale of medical cannabis for those 18 and older. MMRSA went into effect January 1, 2016. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA established a licensing and regulatory framework for commercial cultivation, manufacturing, distribution, and sale of cannabis for those aged 21 and older. Proposition 64 was approved by 56.9% of Oceanside voters.

On April 19, 2017, the City Council designated an ad-hoc committee to explore possible regulations allowing for medical marijuana businesses in Oceanside. The ad-hoc committee included Deputy Mayor Chuck Lowery serving as committee Chair, and Councilmember Jerry Kern serving as Vice Chair. The ad-hoc committee held eight public
meetings, took tours of medicinal cannabis production facilities, and met with industry experts. On December 20, 2017, the ad-hoc committee presented its report to the City Council and asked the City Council to receive the report and recommendations and forward the recommendations to appropriate staff and advisory boards/commissions for review and comments to be brought back to Council for adoption at a later date. After discussion, the City Council referred the recommendations to staff and advisory boards/commissions for review and comments on a vote of 3-1 (Councilmember Sanchez voting no) with a provision that the recommendations focus solely on “Medical” Marijuana.

On March 28, 2018, the City Council formally considered the recommendations of the ad hoc committee. Following extensive public testimony and deliberation, the City Council on a 4-1 vote (Councilmember Feller voting no) introduced an ordinance amending the City Code and Comprehensive Zoning Ordinance to allow the establishment and operation of several commercial medical cannabis-related uses including nurseries, cultivation, manufacturing, distribution and testing. The City Council did not take action to allow dispensaries.

On April 11, 2018, the City Council adopted the ordinances introduced on March 28, 2018, on a 3-2 vote (Deputy Mayor Lowery and Councilmember Feller voting no). In a subsequent Motion offered by Councilmember Kern, staff was directed to return to Council at a workshop to be scheduled on June 20, 2018, to further discuss the adopted regulations pertaining to the minimum 1,000 foot separation requirement between regulated medical cannabis uses and the limitation of a maximum of 22,000 square feet of cultivation or nursery area per legal lot in the Agricultural Zone. Police Department staff was also directed to present a report regarding the potential impacts of establishing cannabis dispensaries. The vote on this subsequent Motion was 3-2 (Councilmembers Feller and Sanchez voting no).

On May 23, 2018, the City Council approved a regulatory fee structure and application format for commercial medical cannabis facilities on a 4-1 vote (Councilmember Feller voting no). Applications for commercial medical cannabis facilities will be accepted beginning on June 25, 2018, with the initial application period ending on October 1, 2018. The next application period will open immediately thereafter with no anticipated end date.

PROJECT DESCRIPTION

A text amendment to the Oceanside Comprehensive Zoning Ordinance (ZA18-00003).

ANALYSIS

Separation of Regulated Uses:

During public comment and Council deliberation on the recently adopted commercial medical cannabis regulations, there was much discussion regarding the fact that cannabis nurseries and cultivation facilities are to be categorized as a “regulated use”. This regulated use designation was recommended by the ad-hoc committee. Common
examples of a regulated use include liquor stores, payday loan businesses, massage uses, and tobacco establishments. Under the City’s Comprehensive Zoning Ordinance, a regulated use is subject to a number of locational requirements including separation from nearby “sensitive uses” which include residential uses, public or private schools, parks, playgrounds or public beaches, religious facilities and child care/pre-school facilities. In the case of cannabis-related businesses, such uses must be located at least 1,000 feet from the above-mentioned sensitive uses. In addition, a regulated use must be located at least 1,000 feet from another regulated use. During public testimony received on the recently-adopted medical cannabis ordinance, the provision of requiring 1,000 feet of separation between another regulated use was cited as a concern by those interested in cultivating cannabis within the City’s Agricultural Zone. Unlike other regulated uses within the City, per the recently adopted Ordinance, the operator of a cannabis-related use cannot seek a waiver from the separation provisions described above. The 1,000 foot separation requirement, coupled with the inability to seek a waiver of said provision, was viewed as a significant hindrance to those wishing to cultivate cannabis in the Agricultural Zone. In response to such concerns, Council directed staff to further study this issue. Related to this, Council also directed staff to review the provision which limits the size of cannabis-related nurseries and cultivation facilities to 22,000 square feet of growing area per legal parcel.

In response to the concerns raised and following additional analysis, staff has determined that it would be appropriate to eliminate the need for cultivation facilities and nurseries to maintain a 1,000 foot separation from each other. Because such uses are subject to the approval of a conditional use permit (CUP), the potential impacts of allowing such uses in close proximity to another like use can be reviewed on a case by case basis. Through the CUP review process, each growing facility would be carefully evaluated with respect to potential impacts to surrounding uses. The potential overconcentration of uses in a given location could also be addressed through the discretionary CUP review process. Through this additional analysis, staff has further determined that the existing provision which prohibits other regulated cannabis uses (i.e., manufacturing and distribution) from seeking a waiver of the 1,000 foot separation requirement afforded to other regulated uses in the City may be overly restrictive and contrary to the goals of allowing such uses in a controlled and reasonable manner. As a result, staff is further recommending that the Article 36 (Separation of Regulated Uses) of the Comprehensive Zoning Ordinance be amended to allow the proponents of such businesses to seek a waiver of the minimum separation requirements should they be located within 1,000 feet of a sensitive use or other regulated use. Per existing Code, the approval of such a waiver request would be discretionary and considered concurrent with the requisite CUP. Waivers are subject to discretionary review by the Planning Commission and City Council, subject to all of the following findings:

1. It will not be contrary to the public interest.
2. It will not be contrary to the spirit or intent of this Article.
3. It will not impair nearby property or the integrity of the underlying district.
4. It will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

Staff believes that allowing a business operator to seek a waiver of the minimum separation requirements would not be detrimental because the merits of each request would be carefully reviewed on a case by case basis and subject to discretionary review at both a Planning Commission and City Council noticed public hearing.

Number of Cultivation Facilities and Nurseries Allowed per Legal Lot:

Similar to the required separation of cultivation uses, the requirement of limiting cultivation and nursery facilities to no more than 22,000 square feet per legal parcel in the Agricultural Zone was raised as a concern during public testimony. This particular provision was recommended by staff as a means to control the number of and extent of growing facilities within the Agricultural Zone. The idea of limiting the number of cultivation facilities in the Agricultural Area was largely in response to a desire to ensure that ongoing agritourism planning activities are not compromised by a proliferation of cannabis growing operations in the South Morro Hills community. Upon further analysis, staff believes that the potential for proliferation can be effectively monitored through the discretionary conditional use permit process. An existing 20% lot coverage limit for Medical Cannabis Cultivation facilities and/or Medical Cannabis Nurseries would remain and continue to limit the extent of cannabis growing activity in the area. In the event that a large number of growing facilities are proposed and established in the area, staff would likely propose an amendment to the Comprehensive Zoning Ordinance to further restrict such uses in the interest of protecting future agritourism interests. The City Council also has the ability to limit the number of licenses issued under Chapter 7, Article XIII of the Oceanside City Code.

Definition of Medical Cannabis Manufacturing:

Following the recent adoption of the City’s commercial medical cannabis use ordinance, staff identified a discrepancy related to the definition of Medical Cannabis Manufacturing which, in part, currently reads as follows: “The production, preparation, propagation and compounding of cannabis products, without the use of volatile solvents.” The word “propagation” currently included in the definition may lead to confusion as to whether the growing of cannabis would be allowed as part of a Medical Cannabis Manufacturing business. This was not the intent as the growing of cannabis was intended to be strictly limited to the Agricultural Zone whereas Medical Cannabis Manufacturing businesses are only allowed in the City’s two industrial zoning districts. The recommended ordinance removes the word “propagation” from the definition of Medical Cannabis Manufacturing thereby addressing this issue.

FISCAL IMPACT

Does not apply.
ENVIRONMENTAL DETERMINATION

The proposed ordinance, in and of itself, would not occasion land development or any other material change to the environment. Projects subject to the amended provisions would be subject to separate CEQA review. Therefore, in accordance with the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b) (3), there is no possibility the proposed zoning text amendment may have a significant effect on the environment and therefore is not subject to CEQA review.

CITY ATTORNEY’S ANALYSIS

The City Council is authorized to hold a public hearing in this matter. Following the hearing, the City Council shall affirm, modify or reject the staff recommendation.

The City Attorney has drafted, and approved as to form, the Zoning Ordinance amendment consistent with the staff recommendation.

RECOMMENDATION

Staff recommends that the City Council introduce an ordinance amending the Oceanside Comprehensive Zoning Ordinance (aka 1992 OZO). The purpose of the amendment (ZA18-00003) is to update regulations concerning medical cannabis uses as follows: 1) eliminate zoning ordinance text limiting medical cannabis cultivation facilities and medical cannabis nurseries to 22,000 sq. ft. per legal lot, existing at the time of adoption of ordinance 18-OR0199-1, and retain the 20% (max) lot coverage; 2) eliminate the 1,000 ft. locational requirement buffer between all medical cannabis cultivation facilities and/or between all medical cannabis nurseries; 3) allow for waiver of locational requirements for medical cannabis facilities pursuant to Section 3605 of Article 36; and 4) clarify that the land use classification definition for medical cannabis manufacturing excludes propagation of medical cannabis.

PREPARED BY:

Jonathan Borrego
Development Services Director

SUBMITTED BY:

Deanna Lorson, Assistant City Manager
Jeff Hunt, City Planner

Michelle Skaggs Lawrence
City Manager

ATTACHMENTS:

1. City Council Ordinance
ORDINANCE NO.


WHEREAS, the City of Oceanside, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana ("cannabis") for any purpose in the United States and further provides criminal penalties for cannabis possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of cannabis for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) ("MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit cannabis cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical
cannabis cultivation, manufacturing, dispensing, and/or delivery, in which case the new law
would not allow or permit these activities within the cities and counties; and

WHEREAS, marijuana remains a schedule I substance pursuant to federal law, 21 U.S.C.
§ 812, Schedule I (c)(10), and federal law does not provide for any medical use defense or
exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers’
Coop., 532 U.S. 483 (2001)); and

WHEREAS, in City of Riverside v. Inland Empire Patients Health and Wellness Center,
Inc., 56 Cal. 4th 729 (2013), the California Supreme Court held that neither the CUA nor the
MMPA preempt local regulation; and

WHEREAS, the MMRSA expressly allows cities and counties to ban cannabis businesses
consistent with current state law, including City of Riverside v. Inland Empire Patients Health
and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the City Council added Chapter 7, Article XIII to the Oceanside City Code
on January 20, 2016 to prohibit cannabis cultivation and delivery activities within the City of
Oceanside for the express and specific purpose of preserving the City’s authority to ban and/or
adopt future regulations pertaining to cannabis cultivation and delivery as is required by
California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by
the MMRSA; and

WHEREAS, on March 16, 2016, the Oceanside City Council added section 7.113 to
Chapter 7, Article XIII of the Oceanside City Code to permit and regulate medical cannabis
delivery services that originate from licensed dispensaries in other jurisdictions; and

WHEREAS, in adopting Ordinances 16-OR0041-1, and 16-OR0156-1, the City Council of
the City of Oceanside made findings regarding the impacts associated with commercial cannabis
activities and these findings are incorporated herein by reference and ratified; and

WHEREAS, Proposition 64 was adopted by the electorate on November 8, 2016 and
authorizes the personal cultivation of up to six cannabis plants in a private residence for non-
medical purposes; and

WHEREAS, Proposition 64 allows cities to enact reasonable regulations for the
cultivation of non-medical cannabis that occurs inside a residence or accessory structure and may
completely prohibit outdoor non-medical cultivation until such time as the California Attorney
General determines that the non-medical use of cannabis is lawful in California under federal
law. No such determination has yet been made; and

WHEREAS, Proposition 64 regulates the commercial activity of non-medical cannabis
enterprises and assigns certain state agencies with regulatory tasks regarding commercial non-
medical cannabis. Proposition 64 authorizes specified state agencies to issue licenses for
commercial non-medical cannabis businesses; and

WHEREAS, Proposition 64 includes Business and Professions Code section 26200 which
recognizes that a city may regulate or completely prohibit within its jurisdiction the establishment
or operation of one or more types of non-medical cannabis businesses licensed by the state; and

WHEREAS, at the time Proposition 64 was adopted, the City of Oceanside’s permissive
Zoning Code does not list commercial cannabis activities as permitted uses in any zoning district
in the City and, therefore, such uses were not allowed anywhere in the City; and

WHEREAS, the City Council adopted Ordinance 17-0R0234-1 on April 19, 2017
prohibiting all commercial non-medical cannabis businesses; and

WHEREAS, the California State Legislature adopted SB 94 in June 2017. The budget
trailer bill took effect immediately and repeals the Medical Cannabis Regulation and Safety Act
(“MCRSA”), passed in 2015, and incorporates many of MCRSA’s provisions into Prop 64. The
new comprehensive regulatory system, intended to regulate all commercial cannabis uses, is
called the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). SB
94 clarifies that cities and counties retain full land use authority as to cannabis businesses; cities
and counties may prohibit such businesses entirely, allow only some, or allow them with locally
developed regulations that fit local needs. SB 94 also establishes that local jurisdictions retain
the authority to regulate cannabis businesses, may take enforcement action concerning Fire and
Building Codes, conduct inspections, and implement audits.

WHEREAS, under SB 94, the state is now required to notify a local jurisdiction when it
receives an application for commercial cannabis activity in that jurisdiction. The city or county
then has 60 business days to notify the state whether the applicant is in compliance with local
regulations. Although proof of authorization from a city or county is not required, an applicant
may voluntarily include this information with its state application. The state is also prohibited
from issuing a cannabis license if issuance would violate any local ordinance; and

WHEREAS, on April 11, 2018, the City Council adopted Ordinance 18-0R0199-1 to
allow, subject to certain requirements and limitations, commercial medical cannabis businesses,
excluding dispensaries) in specified industrial and agricultural zoning districts, subject to a
conditional use permit and the issuance of a Local License pursuant to Chapter 7, Article XIII
of the Oceanside City Code; and

WHEREAS, after a duly noticed public hearing conducted on June 20, 2018, the City
Council desires to make changes to Ordinance 18: 1. to allow commercial cultivation in the
Agricultural zone subject to a Local License and CUP, without a 1000 foot buffer otherwise
required in Article 36 on the condition that cultivation does not exceed 20 percent lot coverage;
2. to permit waivers of the 1000 foot separation requirement for commercial cannabis
businesses in the Industrial zone on a case by case basis; and 3. clarify that the existing law
does not allow cultivation in the Industrial zone.

WHEREAS, pursuant to the provisions of the California Environmental Quality Act
(hereinafter “CEQA”) (California Public Resources Code Sections 21000 et seq.) and State
CEQA guidelines (Sections 15000 et seq.), the City has determined that this Ordinance is exempt
pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE DOES
ORDAIN AS OFFLWS:

SECTION 1: The City Council finds that all the facts, findings, and conclusions set forth
above in this Ordinance are true and correct.

SECTION 2: Zone Amendment (ZA 18-00003) amending Articles 4, 14 and 36 of the
1992 Zoning Ordinance, as specified in Exhibit A, is hereby adopted.

SECTION 3 The City Clerk of the City of Oceanside is hereby directed to publish this
Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)
days after its passage in a newspaper of general circulation published in the City of Oceanside.

SECTION 4 If any section, sentence, clause or phrase of this Ordinance is for any reason
held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such
decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 5. This ordinance shall be effective 30 days after its adoption for those areas outside of the Coastal Zone. Although this ordinance does not identify any zones within the Coastal Zone where any commercial cannabis businesses may be established, the amendments to Articles 4 and 36 apply citywide. Therefore, Articles 4 and 36 shall not be effective within the Coastal Zone until the City Council adopts a resolution approving a local coastal program amendment to amend these sections and said amendment is unconditionally certified by the Coastal Commission.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the 28th day of June 2018, and, thereafter,

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside, California, held on the ______ day of August 2018 by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY
Article 4 Use Classifications  (Inland & Coastal Districts – Exclusive of Downtown)

Sections:

410 Purpose and Applicability
411 Uses Not Classified
412 Residential Use Classifications
413 Public and Semipublic Use Classifications
414 Commercial Use Classifications
415 Industrial Use Classifications
416 Agricultural and Extractive Use Classifications
417 Accessory Use Classifications
418 Temporary Use Classifications

410 Purpose and Applicability

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The City Planner shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The City Planner may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification. The City Planner's decision may be appealed to the Planning Commission.

411 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification is prohibited. Provided, however, that any new use may be incorporated into the zoning regulations by a Zoning Ordinance text amendment, as provided in Article 45.

412 Residential Use Classifications

A. Day Care, Limited. Non-medical care and supervision of up to and including fourteen persons on a less than 24-hour basis within a licensee's home for children and adults.

B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes roominghouse/boardinghouse, dormitories, fraternities, sororities, and private residential clubs, but excludes residential hotels (see Single-Room Occupancy (SRO) Residential Hotels).

C. Live/Work Quarters. An area comprising one or more rooms in a building originally designed for industrial or commercial occupancy that includes cooking space, sanitary facilities, and working space for artists, artisans and similarly activities and Custom
Industry uses as defined herein.

D. **Multifamily Residential.** Two or more dwelling units on a site. This classification includes mobile home and factory-built housing.

E. **Residential Care, Limited.** Twenty-four-hour non-medical care for six or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.

F. **Single-Family Residential.** Buildings containing one dwelling unit located on a single lot. This classification includes mobile home and factory-built housing.

G. **RV Parks.** A facility renting or leasing space on a short-term or long-term basis to owners or users of recreational vehicles, not for permanent residence.

### Public and Semipublic Use Classifications

A. **Airport.** Runways and related facilities for airplane landing and take-off.

B. **Cemetery.** Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery.

C. **Child Care.** Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity, and not within a licensee's home for persons under the age of 18.

D. **Clubs and Lodges.** Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs, youth, and senior centers.

   1. **Small scale.** Establishments occupying no more than 5,000 square feet.

E. **Convalescent Facilities.** Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services.

F. **Cultural Institutions.** Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries.

   1. **Small-scale.** Establishments occupying no more than 5,000 square feet.

G. **Day Care, General.** Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity, and not within a licensee's home for persons over the age of 18.
H. Detention Facilities. Publicly owned and operated facilities providing housing, care, and supervision for persons confined by law.

I. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis.

J. Emergency Shelter. Overnight sleeping accommodations intended to provide temporary housing to homeless families and/or individuals. Such accommodations may include basic supportive services such as food, shower and rest room facilities, laundry room, storage areas, and limited administrative or intake offices.

K. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles.
   1. Small-scale. Establishments occupying no more than 5,000 square feet.

L. Heliports. Pads and facilities enabling takeoffs and landings by helicopters.

M. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for outpatient treatment, as well as training, research, and administrative services for patients and employees.

N. Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities.

O. Marinas. A boat basis with docks, mooring facilities, supplies and equipment for boats.

P. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces.

Q. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection.
   1. Small-scale. Establishments occupying no more than 5,000 square feet.

R. Religious Assembly. Facilities for religious worship and incidental religious education and other religious facility related supportive and social services. This use classification specifically excludes private schools as defined in this section.
   1. Small-scale. Establishments occupying no more than 5,000 square feet.

S. Residential Care, General. Twenty-four hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services,
supervision, protection, or assistance essential for sustaining the activities of daily living.

T. Resource Centers. Neighborhood facilities that are City-sponsored or under the control of the City and are used for neighborhood safety, enhancement, education, health care, and other similar neighborhood programs.

U. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California.

V. Transitional Housing. Transitional housing encompasses both housing and appropriate supportive services for homeless persons designed to enable them to move to independent living within a 24-month period.

W. Utilities, Major. Generating plants, electrical substations, aboveground electrical transmission lines, lone switching buildings, refuse collection, transfer, recycling or disposal facilities, water reservoirs, flood control or drainage facilities, water or waste water treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.

X. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling centers within convenience zones, as defined by the California Beverage Container Recycling and Litter Reduction Act.

414 Commercial Use Classifications

A. Adult Business. An Adult Business is any business, where employees, independent contractors, or patrons expose "specified anatomical areas" or engage in "specified sexual activities," or any business which offers to its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas".

A use which has a majority of its conduct of activities, floor area, stock-in-trade, or revenue derived from, material characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas", shall be considered to be an Adult Business.

Adult Businesses do not include bona fide medical establishments operated by properly licensed and registered medical personnel with appropriate medical credentials for the treatment of patients.

Adult Businesses include, but are not limited to the following:

1. Adult Bookstore/Novelty Store/Video Store. An establishment which has: (1) a
substantial or significant portion of its gross revenues or of its stock in trade, books, magazines, and other periodicals or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or (2) a substantial or significant portion of its stock in trade, instruments, devices or paraphernalia designed for use in connection with "Specified Sexual Activities".

2. Adult Entertainment Business. Any establishment that (1) is customarily only open to adults and excludes minors by reason of age, and (2) devotes a substantial or significant portion of its stock in trade to the sale or display of instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities".

3. Adult Cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features: (1) persons who appear in a state of nudity; or (2) live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities"; or (3) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".

4. Adult Motel. A motel or similar establishment offering public accommodations for any consideration, which provides patrons with material distinguished or characterized by an emphasis on depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".

5. Adult Motion Picture Theater. An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein.

6. Adult Theater. A theater, concert hall, auditorium, or other similar establishment, either indoor or outdoor in nature, which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas for observation by patrons.

7. Figure Studio. Any premises on which the business of furnishing nude models who pose for the purpose of being photographed, sketched, painted, drawn or observed by persons who pay a fee, or other consideration or compensation, or a gratuity, for the right or opportunity to depict or observe the model, or for admission to, or for permission to remain upon, or as a condition for remaining upon, the premises.

The term model shall include: Any person, male or female, who poses nude to be photographed, sketched, painted, drawn or observed.
The term nude shall include: Completely without clothing; or with any pubic area exposed; or with the pubic area covered in such a manner that the private parts are visible or the form thereof discernible; or with the breasts exposed by female so that the nipples thereof are exposed.

"Figure studio" does not include any studio or classroom which is operated by any public agency, or any private post secondary educational institution authorized by California state law to issue and confer a diploma or degree.

8. Peep-Show Establishment. Peep-Show Establishment as defined in the Oceanside City Code.

B. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles.

C. Animal Sales and Services.

1. Animal Boarding. Provision of shelter and care for animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care.

2. Animal Grooming. Provision of bathing and trimming services for animals on a commercial basis. This classification includes boarding of domestic animals for a maximum period of 48 hours.

3. Animal Hospitals. Establishments where animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (30 days) boarding of animals is included if incidental to the hospital use.

4. Animals: Retail Sales. Retail sales and boarding of animals provided such activities take place within an entirely enclosed building. This classification includes grooming if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours.

D. Artists Studios. Work and display space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft.

1. Small-scale. Establishments occupying no more than 5,000 square feet.

E. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification is limited to institutions engaged in the on-site circulation of cash money including businesses offering check-cashing facilities.

1. Drive-through/Drive-up Service. Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located
2. **Self-service Facilities (ATM's).** Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located on the same site.

F. **Bars and Cocktail Lounges.** Any premises designed, used or intended to be used for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food is not sold or served to the public as in a bona fide restaurant. Ancillary tasting facilities associated with craft breweries and craft wineries shall not be considered to constitute bars or cocktail lounges as here defined.

G. **Bath Houses.** Any establishment or business which has as its primary activity or service the provision of communal or private bathing in a sauna, jacuzzi or other therapeutic bath, save and except for bathing conducted as part or a hydrotherapy treatment practiced by or under the supervision of a medical practitioner who is formally associated therewith.

H. **Brewery, Craft.** A small-scale beer manufacturing facility that includes designated floor area (comprising no less than 20 percent and no more than 40 percent of the total floor area) for product sampling and/or retail sales of beer conforming to state requirements. Retail sales of craft brewery merchandise including mugs, pint glasses, growlers, tap handles, coasters, apparel, signs, bottle openers, and books are also permitted. A craft brewery shall produce a minimum of 250 barrels annually and not exceed a maximum output of 15,000 barrels annually (with a barrel of beer being equal to 31 U.S. gallons). Facilities housing a craft brewery shall not exceed 15,000 square feet of floor area. The category of a craft brewery (based upon floor area and scale of operation) shall determine the appropriate review and approval process, as specified below. Such facilities shall be subject to the following limitations:

1. Other than business name and/or logo, such uses shall not display exterior signage (including advertising directed to the exterior from interior spaces) that promotes the availability of alcoholic beverages.
2. There shall be no amusement or video machines maintained on the premises.
3. There shall be no "happy hour" or regular periods of reduced-priced alcoholic beverages.
4. Amplified live entertainment shall require issuance of an Administrative Use Permit.
5. Ancillary food service involving outdoor equipment (e.g., food trucks) shall require issuance of an Outdoor Facilities Permit.
6. Delivery/distribution activities involving Class 4 or higher vehicles shall not occur between the hours of 10 p.m. and 7 a.m.
7. Hours of operations shall not extend beyond 10 p.m., unless extended hours of operation are approved through a Conditional Use Permit.

Craft breweries shall be regulated under the following tiered review and approval process:

1. Tier 1: Produces at least 250 and no more than 10,000 barrels annually and does not exceed 10,000 square feet of floor area. Tier 1 facilities are subject to approval of an Administrative Conditional Use Permit (ACUP) when not abutting residential zoning districts, schools, and/or churches. Tier 1 facilities abutting residential zoning districts, schools, and/or churches are subject to approval of a Conditional Use Permit (CUP).

2. Tier 2: Produces at least 750 and no more than 15,000 barrels annually and does not exceed 15,000 square feet of floor area. Tier 2 facilities are subject to approval of a Conditional Use Permit (CUP).

I. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services, including vehicle towing services.

J. Catering Services. Preparation and delivery of food and beverages for off-site consumption with provision for on-site pickup or consumption not to exceed 1,000 square feet. (See also Eating and Drinking Establishments.)

K. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors, pool rooms, dance halls, ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/ racquetball courts, arcades and games centers having five or more coin-operated game machines and card rooms.

1. Dance Establishment. Any premises wherein a public dance, as defined in the Oceanside City Code, is held.

2. Pool Rooms, Billiard Rooms, and Shooting Galleries. Pool rooms, billiard rooms, and shooting galleries as defined in the Oceanside City Code.

3. Arcades and Game Centers. Any place having five or more coin-operated, slug-operated, or any type of amusement or entertainment machines for which payment is necessary for operation. These include, but are not limited to pinball machines and video games, but do not include merchandise vending machines or mini-jukeboxes (See Section 3027, Arcades and Game Centers).
4. **Limited.** Indoor movie theaters and performing arts theaters.

5. **Small-scale.** Establishments occupying no more than 5,000 square feet.

L. **Communications Facilities.** Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; and telegraph offices.

M. **Food and Beverage Kiosk.** An establishment that provides walk-up and/or drive-thru food and beverage services only through a kiosk window for off-site consumption. The sale and consumption of alcoholic beverages is prohibited.

N. **Food and Beverage Sales.** Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments.

1. **Convenience Markets.** Retail sales of food, beverage and small convenience items typically found in establishments with long or late hours of operation. This definition excludes delicatessens and other specialty food shops having a sizeable assortment of fresh fruits and vegetables, and fresh-cut meat or fish.

2. **Liquor Store.** A place or business engaged in the primary business of off-sale alcoholic beverages. For the purposes of this ordinance, primary business shall mean 25 percent or more of the shelf area of a business.

O. **Funeral and Interment Services.** Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries.

P. **Home Improvement.** Retailing or wholesaling of goods to be used for home improvements or the furnishing of homes. This classification is limited to specialty businesses in which the primary inventory of the business includes one of the following merchandise: furniture, carpet and other floor coverings, window coverings, wall coverings, bed and bath products, kitchen remodels, doors and windows, garage doors, glass, paint, mattresses, cabinets and shelves, fireplaces, patios, lighting materials, pool and spas, and similar uses. This use classification does not include a comprehensive home improvement store.

Q. **Horticulture, Limited.** The raising of fruits, vegetables, flowers, ornamental trees and shrubs on sites of 2.5 acres or less, as a wholesale commercial enterprise, provided that nursery equipment or materials necessary for the operation shall be stores on-site within structures. Wholesale commercial horticulture accessory to a dwelling unit shall be
regulated as a home occupation. On-site Agricultural Sales Stands may be allowed subject to the location and development standards of Section 3038.

R. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry.

S. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats and ships (see Vehicle/Equipment Repair and Marine Sales and Services).

T. Marine Sales, Rentals, and Services. Establishments providing supplies and equipment for shipping or related services, or pleasure boating and recreation. Typical uses include chandleries, yacht brokerage, sales, boat yards, boat docks, and sail-making lofts.

U. Nurseries. Wholesale or retail establishments for the selling of plants, shrubs, trees and related products in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer or chemicals of any type are stored and sold in package form only. Nurseries may include the growing and propagation of plants as part of the operation. This classification excludes medical Cannabis Nurseries.

V. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, real estate, insurance, investment, legal, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations.

W. Payday Loan/Paycheck Advance Establishment. A person or entity that for compensation, engages in whole or in part, in the business of lending limited amounts of funds for a short-term, against the borrower’s future paychecks. The aforementioned definition excludes State or federally chartered banks, savings associations, credit unions, or industrial loan companies offering direct deposit advance service to their customer that is incidental to their main purpose or business.

X. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 22 of the Municipal Code.

Y. Personal Improvement Services. Provision of instructional services or facilities, including: photography, fine arts, crafts, dance or music studios; driving, business or trade schools; diet centers, or reducing salons; and health/fitness studios, spas or clubs.

1. Health/Fitness Studios, Spas or Clubs. Establishments with equipment for exercise and physical conditioning.
2. **Massage Establishments.** Establishments providing massage service.

3. **Small Scale.** Establishments occupying no more than 5,000 square feet.

Z. **Personal Services.** Provision of services of a personal nature. This classification includes: tattooing establishments, body piercing establishment, escort services, barber and beauty shops, seamstresses, tailors, shoe repair shops, laundry and dry cleaning agencies (excluding large-sale plants - see Section 15.C.1), photo-copying, word processing, packaging, postal and office supply support facilities, and self-service laundries.

   1. **Tattooing Establishment.** Any establishment or business engaged in "tattooing" as defined in the Oceanside City Code, excluding “micropigmentation” or “permanent cosmetic makeup” typically provided at beauty salon or day spas.

   2. **Body Piercing Establishment.** Any establishment or business engaged in “body piercing”. Body piercing means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, eyebrow, naval, male genitals, female breasts or female genitals. “Body piercing” does not include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

   3. **Escort Services.** Any premises where patrons can purchase the social company or companionship of another person.

   4. **Limited.** Excludes laundry and dry cleaning agencies and self-service laundries.

   5. **Small-scale.** Establishments occupying no more than 2,500 square feet.

AA. **Research and Development Services.** Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electronic research firms, pharmaceutical research laboratories, and medical testing and analysis, but excludes manufacturing, except of prototypes. This classification excludes Medical Cannabis Testing Laboratories.

BB. **Restaurants, Fast Food.** A bona fide restaurant establishment where the principal business is the sale of prepared or rapidly prepared food and beverages to guests via counter, walk up, or window service for consumption on or off the premises. The sale of beer and wine for on-site consumption is permitted. As used in this definition, a “bona fide” restaurant shall have suitable kitchen facilities for cooking and/or preparation of meals. The word “meals” means the assortment of food commonly ordered at various hours of the day.

   1. **Restaurants, Fast Food with Drive-thru or Drive-up.** A restaurant establishment providing service from a building to patrons in vehicles through an outdoor
service window (Drive-thru) or delivery service to vehicles parked in designated parking spaces (Drive-up). The sale and consumption of alcoholic beverages at a restaurant with a Drive-thru or Drive-up window is prohibited.

CC. Restaurant Full Service. A bona fide restaurant establishment where the principal business is the sale of food and beverages to guests via table service for consumption on the premises. The sale of beer and wine for on-site consumption shall be considered incidental to the full service restaurant. Delivery service to vehicles parked in designated parking spaces (i.e. drive-up) is allowed as an ancillary service to the Restaurant Full Service. As used in this definition, a “bona fide” full service restaurant shall have suitable kitchen facilities for cooking of complete meals. The word “meals” means the assortment of foods commonly ordered at various hours of the day; the service of only such foods as sandwiches or salads does not meet the bona fide restaurant definition.

1. Restaurants Full Alcohol. A bona fide restaurant establishment authorized to sell distilled spirits for consumption on licensed premises. The sale of liquor is included as an appurtenant use to full service restaurants having table seating and service for more than 50 guests.

2. Restaurants Full Service with Live Entertainment – (Small Scale). Restaurant establishments providing live entertainment to patrons with 5 or fewer performers at restaurant facilities with no dance floor during typical lunch and dinner hours (11:00 a.m. – 11:00 p.m.) and having 75 percent food sales compared to alcohol sales.

DD. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, clothing stores, comprehensive home improvement stores, furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies (including limited processing), electronic equipment, records, sporting goods, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).

1. Limited. Excludes comprehensive home improvement stores, furniture, hardware, paint and wallpaper, carpeting and floor covering, and new automotive parts and accessories.

2. Pharmacies and Medical Supplies. Establishments primarily selling prescription drugs, and medical supplies and equipment.

EE. Secondhand Furniture, Appliance, "Collectible" and Clothing Sales. The retail sale of used furniture, appliances, "collectibles" and clothing, and secondhand dealers who are subject to Chapter 22 of the Municipal Code. This classification excludes antique shops primarily engaged in the sale of antique furniture and accessories.
1. **Small-scale.** Establishments occupying no more than 5,000 square feet.

FF. **Sex Supermarket/Sex Mini-Mall.** The establishment or operation within the same building of more than one of any of the following Adult Businesses: adult bookstore or adult video store, adult cabaret, adult entertainment business, adult motion picture theater, adult theater, or peep-show establishment.

GG. **Swap Meets, Recurring.** Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 48 hours, conducted by a sponsor on a more than twice yearly basis.

HH. **Tobacco and Drug Paraphernalia Establishment.** Any tobacco and drug paraphernalia establishment, as defined in the Oceanside City Code.

II. **Travel Services.** Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies.

JJ. **Vehicle/Equipment Sales and Services.**

1. **Automobile Washing.** Washing, waxing, or cleaning of automobiles or similar light vehicles.

2. **Commercial Parking Facility.** Lots offering short-term or long-term parking to the public for a fee.

3. **Service Stations.** Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and repair of automobiles and light trucks, but excludes body and fender work or repair of heavy trucks or vehicles.

4. **Vehicle/Equipment Repair.** Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping.

   (a) **Limited.** Excludes body and fender shops.

5. **Vehicle/Equipment Sales and Rentals.** Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, mobile homes, and similar equipment, including storage and incidental maintenance.

6. **Vehicle Storage.** Storage of operative or inoperative vehicles. This classification includes storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but does not include vehicle
dismantling.

(a) **Limited.** Storage of operable passenger automobiles, standard and small vans and motorcycles.

**KK.** **Visitor Accommodations.**

1. **Bed and Breakfast Inns.** Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling, with incidental eating and drinking service for lodgers only provided from a single kitchen.

   (a) **Small-scale.** Establishments renting four or fewer rooms.

2. **Hotels, Motels, and Time-Share Facilities.** Establishments offering commercial lodging on a less than monthly basis. This classification includes incidental eating, drinking, and banquet services intended for the convenience of guests.

3. **Single-Room Occupancy (SRO) Residential Hotels.** Buildings with six or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are also the primary residences of the hotel guests.

4. **Vacation Club.** Prepaid point or credit based establishments offering lodging on a less than weekly basis and having kitchens. This classification includes eating, drinking and banquet services.

**LL.** **Warehousing and Storage, Limited.** Provision of storage space for household or commercial goods within an enclosed building. Access to individual storage units shall be via an interior access way. Exterior entry to individual storage units shall not be permitted. This classification includes facilities with a maximum of 5,000 square feet of gross floor area, but excludes Wholesale, Distribution and Storage, and Vehicle Storage. "Limited" vehicle storage as part of a Warehousing and Storage, Limited, facility is permitted subject to the approval of a Conditional Use Permit.

**MM.** **Winery, Craft.** A small-scale winemaking facility that includes designated floor area (comprising no less than 20 percent and no more than 40 percent of the total floor area) for product sampling and/or retail sales of wine conforming to state requirements. Retail sales of craft winery merchandise including wine glasses, wine bottles, decanters, corkscrews, home décor, apparel, signs, books, and other wine paraphernalia are also permitted. A craft winery shall produce a minimum of 300 cases annually and not exceed a maximum output of 10,000 standard cases annually (with a standard case of wine containing twelve 750 ml bottles or nine liters of wine). Facilities housing a craft winery shall not exceed 15,000 square feet of floor area. The category of a craft winery (based upon floor area and scale of operation) shall determine the appropriate review and approval process, as
specified below. Such facilities shall be subject to the following limitations:

1. Other than business name and/or logo, such uses shall not display exterior signage (including advertising directed to the exterior from interior spaces) that promotes the availability of alcoholic beverages.

2. There shall be no amusement or video machines maintained on the premises.

3. There shall be no “happy hour” or regular periods of reduced-priced alcoholic beverages.

4. Amplified live entertainment shall require issuance of an Administrative Use Permit (ACUP).

5. Ancillary food service involving outdoor equipment (e.g., food trucks) shall require issuance of an Outdoor Facilities Permit.

6. Delivery/distribution activities involving Class 4 or higher vehicles shall not occur between the hours of 10 p.m. and 7 a.m.

7. Hours of operations shall not extend beyond 10 p.m., unless extended hours of operation are approved through a Conditional Use Permit.

Craft wineries shall be regulated under the following tiered review and approval process:

1. Tier 1: Produces at least 300 and no more than 7,000 standard cases annually and does not exceed 10,000 square feet of floor area. Tier 1 facilities are subject to approval of an Administrative Conditional Use Permit (ACUP) when not abutting residential zoning districts, schools, and/or churches. Tier 1 facilities abutting residential zoning districts, schools, and/or churches are subject to a Conditional Use Permit (CUP).

2. Tier 2: Produces at least 900 and no more than 10,000 standard cases annually and does not exceed 15,000 square feet of floor area. Tier 2 facilities shall be subject to approval of a Conditional Use Permit (CUP).

415 Industrial Use Classifications

A. Food Processing. Establishments primarily engaged in the manufacturing or processing and packaging of food or beverages for human consumption and wholesale distribution.

1. Limited. Establishments of less than 2500 square feet of floor area.

B. Industry, Custom. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. This
use may include affiliated office and support facilities and limited showroom and a retail sales area when clearly secondary and associated with the primary business.

1. Limited. Includes mechanical equipment not exceeding two horsepower or a single kiln not exceeding eight kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture.

C. Industry, General. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, large scale laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture, small animal production and processing within an enclosed building and power generation.

1. Large Scale Laundry and Dry Cleaning Plants. A laundry or dry cleaning facility having any of the following or similar type equipment:

   (a) Boiler(s) exceeding a total of 15 horsepower;
   (b) Dry cleaning machine(s) exceeding 60 pounds total capacity;
   (c) Dryer(s) exceeding 50 pounds total capacity;
   (d) Wet cleaning washer(s) exceeding 50 pounds total capacity.

D. Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials, and Vehicle/Equipment Services. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary business.

1. Small-Scale. Limited to a maximum gross floor area of 5,000 square feet.

E. Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale. Uses include biotechnology, films, and non-toxic computer component manufacturers, specifically excluding uses which produce offensive odors, dust, and/or noise. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary business.

F. Wholesaling, Distribution and Storage. Storage and distribution facilities. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary
business.

1. **Trucking Terminals.** Storage and distribution facilities having more than six heavy trucks on the premises at one time, but excluding trucking accessory to a Limited or General Industry classification.

3. **Small-Scale.** Wholesaling, distribution and storage having a maximum gross floor area of 5,000 square feet and having no more than two docks or service bays.

G. **Medical Cannabis Distribution Site.** A location where cannabis obtained from a licensed medical cannabis cultivator or medical cannabis products from a licensed medical cannabis manufacturer is temporarily stored, prior to delivery to a licensed medical cannabis dispensary and as part of performing a medical cannabis distributor’s duties under state law. A medical cannabis distributor is a person engaged in the procurement, sale, and transport of medical cannabis and medical cannabis products between licensees.

H. **Medical Cannabis Manufacturing.** The production, preparation, propagation and compounding of cannabis and cannabis products, without the use of a volatile solvent. Nonvolatile cannabis manufacturing includes and is not limited to the extraction of a substance from a cannabis plant with nonvolatile solvents, the infusion or mixture of cannabis into another substance, the preparation of an edible item that includes cannabis, and the packaging and labeling of cannabis or cannabis products. Nonvolatile cannabis manufacturing does not include medical cannabis cultivation.

I. **Medical Cannabis Testing Laboratory.** Laboratory, facility, or entity that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state. (2) Licensed by the state of California to perform medical cannabis testing consistent with Business and Professions Code section 26001.

416 **Agricultural and Extractive Use Classifications**

A. **Animal Husbandry.** Raising of animals or production of animal products, such as eggs or dairy products, on an agricultural or wholesale commercial basis. Typical uses include grazing, ranching, animal breeding, dairy farming, and poultry farming.

B. **Crop Production.** Raising and harvesting of tree crops, row crops, greenhouse crops or field crops on sites of greater than 2.5 acres on an agricultural or wholesale commercial basis, including packing and processing. Medical Cannabis Cultivation Facilities are excluded from the definition of Crop Production.

C. **Animal, Horse and Dog Training and Shows.** Animal training, holistic natural animal
health care, and dog shows with 50 dogs or less. Shows with greater than 50 dogs shall require a special events permit.

D. Medical Cannabis Cultivation Facility means a facility wherein medical cannabis is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking or trimmed, or that does all or any combination of those activities. This definition excludes the cultivation of no more than six nonmedical marijuana plants by a person twenty-one years of age or older for personal use in a private residence provided the cultivation is in a fully enclosed structure that is secure, not visible from a public space and otherwise exempt from state licensing requirements.

E. Medical Cannabis Nursery means a facility that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of medical cannabis.

F. Mining and Processing. Places or plants primarily devoted to surface or subsurface mining of metallic and nonmetallic minerals, oil or gas, together with essential on-site processing and production of only nonmetallic mineral products. Typical places are borrow pits, quarries, oil and gas drilling rigs, or concrete batch plants. This classification specifically excludes any activities that are directly or indirectly associated with off-shore oil and gas exploration, production, or processing.

G. Wineries. An agricultural processing facility used for the fermenting and processing of fruit juice into wine; or the refermenting of still wine into sparkling wine. Tours, tastings and retail sales may be permitted as an accessory use only.

H. Assembly, ceremonies, and weddings. An activity involving assembly or the intention of attracting people for ceremonial, educational, and celebratory purposes at one specific location. Such assembly includes, but is not limited to: receptions, weddings, recitals, exhibits, private parties, and social gatherings.

417 Accessory Use Classifications

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units ("second units") and home occupations.

418 Temporary Use Classifications

A. Agricultural Specialty Sales, Seasonal. Retail sale of seasonal specialty items for a period not to exceed 45 days (e.g. Christmas Tree Sales, Pumpkin Sales).

B. Yard/Garage Sales. A sales event advertised by any means at a residential location
where members of the public may purchase identifiable or tangible items of personal property; provided however, it shall not mean any event which constitutes a sales activity, wholesale or retail, by any business which has a current business license issued by the City. Items sold shall be limited to personal property owned by the occupant of the property and/or surrounding neighbors.
Article 14 A Agricultural District (Inland)

Sections:

1410 Specific Purposes
1420 Land Use Regulations
1430 Development Regulations
1440 Review of Plans
1450 Agricultural Activities

1410 Specific Purposes

In addition to the general purposes listed in Article 1, the specific purposes of the A district are to:

A. Provide a suitable classification for large-scale agricultural and mining operations and related open space uses.

B. Limit non-agricultural uses to those incidental to agricultural operations.

C. Permit only very low-density residential development, compatible with low-intensity agriculture and keeping of livestock.

1420 Land Use Regulations

In the following schedule, the letter "P" designates use classifications permitted in the A district. The letter "L" designates use classifications subject to certain limitations prescribed by the "Additional Use Regulations" which follow. The letter "U" designates use classifications permitted on approval of a use permit, as provided in Article 41. The letters "P/U" designate use classifications permitted on the site of a permitted use, but requiring a use permit on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule.
### A DISTRICT: LAND USE REGULATIONS

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#### Residential Uses

- Day Care, Limited: P
- Single-family Residential: P

#### Public and Semipublic

- Child Care: L-4
- Public Safety Facilities: U
- Utilities, Major: L-2
- Utilities, Minor: P

#### Commercial Uses

- Horticulture, Limited: P
- Animal Sales and Services: (I)
- Animal Boarding: (I)

#### Visitor Accommodations:

- Bed and Breakfast Inns: A
- Assembly, Ceremonies and Weddings: A
- Wineries: A
- Animal/Dog Shows: A

#### Agricultural and Extractive Uses

- Animal Husbandry: L-1
- Crop Production: P
- Mining and Processing: U
- Medical Cannabis Cultivation Facility: U
- Medical Cannabis Nursery: U
- Accessory Uses: P/U

#### Nonconforming Uses

- (E)
A District: Additional Use Regulations

L-1 Administrative Use permit required for more than six domestic or exotic animals; conditions may be imposed limiting herd size and restricting grazing to designated areas to protect water resources from agricultural runoff.

L-2 A use permit is required for generating plants, electrical substations, lone switching buildings, refuse collection, transfer, recycling or disposal facilities, water reservoirs, water or wastewater treatment plants or transportation and similar facilities of public agencies or public utilities. Aboveground electrical transmission lines are not permitted unless determined to be consistent with a utility corridor plan approved by the Planning Commission. Flood control or drainage facilities are permitted if they are consistent with approved master drainage and/or flood-control plans.

L-3 Administrative Use permit required and limited to the stabling of horses (See Section 3034 and the City Code).

L-4 See Article 30: Section 3041, Child Care Facility. Allowed within the RE, RS, RM, RH, RT, CN, CC, CG, CL, CR, CV, CS, CS-HO, CS-L, CP, IL, IG, IP, A, OS, PS and the D Districts subject to obtaining a child Care Facility Permit issued by the City Planner and subject to the City's adopted Child Care Guidelines. If new development (construction) is proposed for a child care facility, a Development Plan Review is required. A Development Plan Review may be conducted independently or concurrently with the Child Care Facility Permit review.

(A) Limited to one primary dwelling unit and one accessory dwelling unit per site, subject to the requirements of Section 3006: Accessory Dwelling Units. A mobile home shall be allowed as a primary residence or as a caretaker's unit, subject to the requirements of Section 3033. Development within an Agricultural Preserve shall also be subject to the terms of the Agricultural Preserve Contract.

(B) See Section 3031: Bed and Breakfast Inns.

(C) See Chapter 4 of the Municipal Code.
A District: Additional Use Regulations (continued)

(D) Limited to facilities incidental to an agricultural or extractive use. Farmworkers' housing requires a use permit issued in accord with the provisions of Article 41. The Planning Commission shall approve or conditionally approve applications for facilities with 10 or more beds, while the City Planner shall approve or conditionally approve applications for facilities with fewer than 10 beds. As conditions of approval, the Planning Commission or the City Planner, as the case may be, may establish restrictions on the number of rooms and the size and location of kitchen facilities, and may limit occupancy to farmworkers employed by the owner and/or operator of the farm on which the housing is located with the objective of ensuring that a use is compatible with adjacent agricultural and residential uses.

(E) See Article 35: Nonconforming Uses and Structures.

(F) Residential development shall be permitted provided such development does not interfere with existing, proposed, or potential agricultural operations, that the open space character of the area is preserved, and that the proposed residential development is consistent with General Plan policies. In all cases the minimum lot size shall not be less than two and one-half (2.5) acres.

(G) See Article 39.

(H) Agricultural Sales Stands, in conjunction with a Horticulture, Limited or Crop Production use, shall be permitted subject to the locational and development standards of Section 3038.

(I) See Section 3020: Outdoor Facilities; certain outdoor facilities are subject to the development standards of this section.

(J) i. Medical Cannabis Cultivation Facilities and Medical Cannabis Nurseries shall be limited to the A district and shall require the approval of a conditional use permit in accordance with Article 36 of the Zoning Ordinance. Medical Cannabis Cultivation Facilities and Medical Cannabis Nurseries shall not be permitted in any other zoning district even where agricultural uses are otherwise permitted. The City Council may establish by resolution the maximum number of Medical Cannabis Cultivation Facilities or Medical Cannabis Nurseries that may be permitted.

ii. No person or entity shall operate a Medical Cannabis Cultivation Facility or Medical Cannabis Nursery without obtaining the required state license and a Local License in accordance with Chapter 7 of the Oceanside City Code and remaining in compliance with all applicable terms of the state and Local License.

iii. All cultivation within a Medical Cannabis Cultivation Facility or Medical Cannabis Nursery shall take place in the interior of a fully enclosed, secured
structure as required by the Local License. No light source used to cultivate cannabis shall be visible from a public right of way or from any adjacent property. Medical Cannabis Cultivation Facilities or Medical Cannabis Nurseries shall not be subject to an Agricultural Activity Permit, however Section 1450.C. Development Standards for Agricultural Activities shall be implemented via a conditional use permit.

iv. Medical Cannabis Cultivation Facilities and/or Medical Cannabis Nurseries shall not exceed, either individually or combined, the lesser of either 20% lot coverage, or 22,000 square feet per legal lot existing at the time of adoption of this ordinance (Ordinance No. 18-OR0199-1).

1430 Development Regulations

Development regulations shall be as specified by a use permit, provided that, if the use permit fails to regulate an element regulated by an abutting base district, the regulations of the nearest base district shall apply to each portion of an A district. The following development regulations shall apply as applicable:

1. All single-family residential dwelling units, accessory dwelling units, and nonresidential accessory structures within the A district shall comply with the development standards of the RE-A district, provided that the following standards shall be in addition and shall govern where conflicts arise:

   Minimum Lot Area (acres) 2.5

   Minimum Yards:
   
   Front (ft.) 40
   Side (ft.) 30
   Corner side (ft.) 40
   Rear (ft.) 40

   Maximum Coverage 25%

2. The maximum height of a fence or wall, including a retaining wall, shall be 6 feet and decorative fences and walls shall be allowed in the front-yard setback area upon meeting visibility standards and the approval of the City Planner. Decorative entry gates which exceed the height of 6 feet shall require a building permit and the approval of the Traffic Engineer and the Fire Department to insure adequate accessibility for emergency vehicles and to meet visibility standards. Entry gates shall have a minimum front yard setback of 25 feet. See Section 3040 for additional fence and wall standards.
1440 Review of Plans

All projects shall require development plan review per Article 43, unless otherwise specified in this Ordinance.

1450 Agricultural Activities

SPECIFIC PURPOSES

The specific purposes of the Agricultural Activities provisions are to:

1. Provide for a quality working and business environment for agricultural businesses within the City.

2. Recognize the potential for conflicts between agricultural uses and residential uses in the Agricultural District, and provide appropriate standards and criteria for activities associated with agriculture to avoid potential conflicts and promote compatibility between uses.

3. Provide a streamlined approach to achieving compliance with specific development standards within the Agricultural District.

A. Definitions of Agricultural Activities and Locational Criteria

For purposes of this section, the types of Agricultural activities are grouped into two categories, Growing Grounds and Other Agricultural Activities, and the regulation of such uses on a parcel are based upon their location on an Internal or Perimeter Site Area. These are defined as follows:

1. Growing Grounds: Includes crop production, both in the ground and/or in containers, the cultivation and tillage of the soil, cultivation, growing and harvesting of any agricultural or horticultural commodities, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, which activities are open to the sky.

2. Other Agricultural Activities: This includes agricultural uses and activities which are not growing grounds open to the sky, including crop production within structures. Specific types of agricultural activities are as follows.

   (a) Activity Hub: Includes areas of the agricultural business activity which accommodate uses other than crop production, such as staging areas, packing facilities, distribution facilities, storage areas, loading areas, offices, and similar uses.

   (b) Greenhouse: A structure covered with a translucent or transparent material to grow plants. Such facilities may include mechanical equipment for heating or cooling, such as wall fans, horizontal air flow (HAF) fans, or other similar mechanical
equipment.

(c) **Shade Structures**: A structure which does not require a building permit and is not mechanically heated, cooled, or lighted.

3. **Internal Site Area**: Uses located 500 feet or more from the external property line of the agricultural use.

4. **Perimeter Site Area**: Uses located within 500 feet from the external property line of the agricultural uses.

**B. Review Process**

1. **Growing Grounds** – Growing Grounds are allowed to be located anywhere within the Agricultural District, and no permit is required.

2. **Other Agricultural Activities** (includes buildings, shade structures and activity hubs) shall be permitted subject to an approved Agricultural Activity Permit submitted on application forms prescribed by the City Planner, based on the type of use and location on the site, as follows:

   (a) **Agricultural Activity Permit** – If the proposed Agricultural Activity is located at Internal Site Areas and is consistent with the standards listed below, an Agricultural Activity Permit may be issued over the counter. No public notice, Development Plan or public hearing is required. A building or grading permit shall be obtained if otherwise required for the proposed use. An Agricultural Activity Permit may also be issued over the counter if the proposed Agricultural Activity is located within a Perimeter Site Area and each owner of any property or properties within 500 feet of the external property line of the proposed Agricultural Activity provides a written waiver of the public hearing requirement (see B.2.c) below.

   (b) **Alternate Agricultural Activity Permit** – If the proposed Other Agricultural Activity is located at Internal Site Areas and is not consistent with all of the standards listed below, alternatives to the standards may be proposed. An application for an Alternate Agricultural Activity Permit shall be submitted on forms provided by the City, and shall be reviewed by the City Planner. Public notice is required. No Development Plan or public hearing is required, however, the following findings must be made by the City Planner to approve or conditionally approve the proposed alternative and issue an Alternate Agricultural Activity Permit. The City Planner may, at his discretion, forward the Alternate Agricultural Activity Permit to the Planning Commission for its review and action. A building or grading permit shall be obtained if otherwise required for the proposed use.

**Findings for an Alternate Agricultural Activity Permit:**

I. There is reasonable justification for the alternative proposed.
II. The proposed use is in accordance with the objectives of the zoning ordinance and the purposes of the agricultural district.

III. The proposed use is reasonably necessary to the operation of the business at the site.

IV. Any environmental impacts can be mitigated in accordance with the California Environmental Quality Act.

V. The proposed use will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City nor shall it constitute a nuisance.

VI. The proposed modifications generally meet the intent of the guidelines herein.

(c) **Planning Commission Review** – If the proposed Other Agricultural Activity is located within Perimeter Site Areas, an Agricultural Activity Permit or an Alternate Agricultural Activity Permit shall be reviewed and approved conditionally approved or denied at a public hearing conducted by the Planning Commission. If other development-related applications are also required for aspects of the proposed project, such plans shall be reviewed concurrently by the Planning Commission. A public hearing is not required if the proposed Other Agricultural Activity is located within a Perimeter Site Area, and each owner of any property or properties within 500 feet of the external property line of the proposed Agricultural Activity provides a written waiver of the public hearing requirement.

(d) **Appeals** – Decisions of the City Planner may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council in accord with Article 46.

**C. Development Standards for Agricultural Activities**

Agricultural uses shall be permitted within the A District if the following standards are met:

1. All activity shall take place on the premises, including but not limited to staging, parking of all vehicles for employees, customers, vendors, suppliers and visitors, the breaking down of trucks, and truck turn-around areas; no parking or idling or breaking down or other aspects of the Activity shall be permitted on the public streets.

2. All parking, access driveways and staging areas must be surfaced and maintained with either asphalt, concrete, DG, gravel or rock and no mud shall be tracked onto the public roads.

3. Sufficient parking spaces for employees, clients and guests must be provided onsite to
meet the needs of the agricultural operation and activities.

4. Truck parking shall be provided on site that is sufficient in size and number to meet the needs of the agricultural operation and activities.

5. Adequate site access must be provided for all vehicles. See Section 3114 regarding driveway widths and clearances.

6. A truck turnaround area or other suitable truck route through the property shall be provided to accommodate trucks serving onsite operations.

7. Trucks serving the property, including but not limited to packing and greenhouse operations, cannot park and/or idle on public streets. Onsite parking must be available 24-hours per day.

8. Outdoor area lighting shall not employ a light source higher than 25 feet. Building plans submitted for building permit shall include provisions indicating the lighting is properly shielded and directed so as to prevent glare on surrounding properties or onto an adjacent street. Lighting shall comply with all City codes and ordinances in effect at the time of building permit issuance including any light pollution control measures.

9. Agricultural operations shall use Best Management Practices for dust and emissions control and erosion control and must comply with the City's Erosion Control ordinance.

10. The use and storage of chemicals and pesticides shall comply with the regulations set forth by the California State Department of Pesticide Regulation, as enforced by the San Diego County Agriculture Weights and Measures Department.

11. Agricultural operations shall meet all federal, state, regional and City requirements for discharge and drainage including, but not limited to requirements of Regional Water Quality Control Board (RWQCB) and National Pollution Discharge Elimination System (NPDES).

12. Owner/operator/tenant will be responsible for maintaining property and the street area directly adjacent to the property. All trash found within this area will be collected and disposed of properly. In addition, owner/operator/tenant will be responsible for collecting any other trash directly identifiable with the operation, and will dispose of it properly.

13. The agricultural operation shall be in compliance with all local, state and federal environmental protection laws.

14. Outdoor storage areas shall conform with the requirements of Section 3020.

15. Other Agricultural Activity areas shall not be located in any required setback or yard area, required landscape area, required drive aisle, or driveway.
16. Other Agricultural Activity areas and any associated screening or landscaping shall be maintained in good repair. Any dilapidated or dangerous conditions shall be repaired or removed. Graffiti shall be removed in accordance with the City's Graffiti Ordinance.

17. Any grading shall be done in compliance with the City's Grading Ordinance.

18. The maximum height of a fence or wall, including retaining walls, shall be 8 feet and shall be maintained. In addition, all fences and walls shall be subject to the driveway visibility requirements of Section 3115 and all retaining walls over 4 feet in height shall be a planted and irrigated crib-type wall.

19. Signs shall conform with the requirements of Article 33.

20. The screening of mechanical equipment shall conform with the requirements of Section 3021.

21. Agricultural activities shall conform with the Performance Standards in Section 3024.

22. The keeping of animals shall conform with the requirements of Section 3034.
Article 36   Separation of Regulated Uses   (City-wide)

Sections:

3601  Statement of Purpose
3602  Regulated Uses
3603  Definitions
3604  Locational Requirements
3605  Waiver of Locational Requirements
3606  Applicability of Other regulations
3607  Severance Clause

3601  Statement of Purpose

In the development and execution of this ordinance, it is recognized that there are certain land uses including adult oriented businesses and tattoo establishments which create conditions harmful to the public health, welfare, and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by minors. Special regulations separating such uses from each other and from nearby residential areas, family-oriented uses, or sites commonly used by minors, are therefore necessary to protect the community from consequent blight, depreciated property values, law enforcement problems, and interference with residential neighborhoods as well as interference with activities oriented toward families or minors.

3601.1 Findings – Adult Oriented Businesses

A. The City of Oceanside has certain provisions found in its Zoning Ordinance relating to locational criteria including zoning and buffer requirements for adult-oriented businesses that are in need of refinement. The City Council finds that it is necessary and appropriate to amend various provisions of the Zoning Ordinance to add, refine and update the provisions relating to planning and zoning standards for adult-oriented businesses operating within Oceanside. The public health, safety and welfare of the City and its residents require the enactment of this Ordinance in order to: (l) mitigate and reduce the judicially recognized potential adverse secondary effects of adult-oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City’s retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of sexually oriented businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize sexually oriented businesses.

B. The City Council finds that the revisions to the City’s Zoning Ordinance implemented by this Ordinance are necessary in order to respond to recent developments within the regulation of adult uses and case law and in order to protect the City from the potential
adverse secondary effects of adult-oriented businesses, including crime, the protection of the City’s retail trade, maintenance of property values, protecting and preserving the quality of the City’s neighborhoods and the City’s commercial districts, and the protection of the City’s quality of life, based on the referenced studies and the findings set forth herein. Specifically, the revisions and amendments to the City’s Zoning Ordinance included in this Ordinance are essential and necessary to ensure the orderly land use regulation as to adult-oriented business uses within the City and thereby protect the public peace, safety and general welfare in the City of Oceanside.

C. The City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of adult-oriented businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Garden Grove, California (1991); Seattle, Washington (1989); Houston, Texas (1997); Phoenix, Arizona (1979); Tucson, Arizona (1990); Chattanooga, Tennessee (2003); Los Angeles, California (1977); Whittier, California (1978); Spokane, Washington (2001); St. Cloud, Minnesota (1994); Littleton, Colorado (2004); Oklahoma City, Oklahoma (1986); Dallas, Texas (1997 and 2007); Ft. Worth, Texas (2004); Kennedale, Texas (2005); Greensboro, North Carolina (2003); Amarillo, Texas (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); Jackson County, Missouri (2008); Louisville, Kentucky (2004); New York, New York (1994); New York Times Square (1994); Beaumont, Texas (1982); the Report of the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney’s Office (2003); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance to regulate the adverse secondary side effects of adult-oriented businesses, and more specifically finds that these studies provide convincing evidence that:

1. Adult-oriented businesses, as a category of uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, liner, traffic, noise, and sexual assault and exploitation.

2. The studies from other cities establish by convincing evidence that adult-oriented businesses often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Buffering and locational regulations for adult-oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

D. In developing this Ordinance, the City Council is mindful of legal principles relating to regulation of adult-oriented businesses, and the City Council does not intend to suppress
or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult-oriented businesses. The City Council takes legislative notice of the:


2. Decisions of the Ninth Circuit Court of Appeals addressing adult-oriented businesses including but not limited to: Alameda Books, Inc. v. City of Los Angeles, 631 F.3d 1031 (9th Cir. 2011); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2007); Tollis, Inc. v. County of San Diego, 505 F.3d 935 (9th Cir. 2007); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875; World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Dream Palace v. County of Maricopa, 384 F.3d 990 (9th Cir. 2004); Talk of The Town v. Department of Finance and Business Services, 343 F.3d 1063 (9th Cir. 2003); Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way, 46 Fed.Appx. 409 (9th Cir. 2002); Clark v. City of Lakewood, 259 F.3d 996 (9th Cir. 2001); Isbell v. City of San Diego, 258 F.3d 1108 (9th Cir. 2001); Isbell v. City of San Diego, 450 F.Supp.2d 1143 (S.D. Cal. 2006); Diamond v. City of Taft, 215 F.3d 1052 (9th Cir. 2000); L.J. Concepts, Inc. v. City of Phoenix, 215 F.3d 1333 (9th Cir. 2000); Lim v. City of Long Beach, 217 F.3d 1050 (9th Cir. 2000); Young v. City of Simi Valley, 216 F.3d 807 (9th Cir. 2000); 4805 Convoy, Inc. v. City of San Diego, 183 F.3d 1108 (9th Cir. 1999); North v. City of Gilroy, 78 F.3d 594 (9th Cir. 1996); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524 (9th Cir. 1993); Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986); and Lydo Entertainment v. Las Vegas, 745 F.2d 1211 (9th Cir. 1984).


E. The negative secondary effects from adult-oriented businesses constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City’s rationale for this Ordinance, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the City’s interest in regulating adult-oriented businesses extends to preventing future secondary effects of either current or future adult-oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects. The City refers to and incorporates by reference, the record of cases and documentation relating to secondary effects associated with adult-oriented businesses which will remain on file with the City Clerk.

F. Locational criteria are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of the City’s residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside and a sufficient and reasonable number of alternative locations for adult-oriented businesses are provided by this Ordinance. The City Council takes legislative notice of the United States Supreme Court decision in Renton that requires that adult businesses be provided a reasonable opportunity to open and operate. The City Council also takes legislative notice of the Ninth Circuit’s decisions in Topanga Press, Lim and Isbell with respect to availability of sites for adult businesses and finds that under the distance and locational restrictions imposed by this Ordinance there are sufficient sites available for adult-oriented businesses within Oceanside.

G. Relying on the following, the City finds that adult-oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Oceanside, as well as that of other California communities, such as La Habra and Arcadia, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:

1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult-oriented businesses (collectively referred to as “performers”) have been found to engage in sexual activities with patrons of adult-oriented businesses on the site of the adult-oriented business.
2. Evidence has demonstrated that performers employed by adult-oriented businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.

3. Evidence indicates that performers at adult-oriented businesses have been found to engage in acts of prostitution with patrons of the establishment.

4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult-oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Oceanside and the need to regulate the secondary effects of adult-oriented businesses within the community.


I. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult-oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (i.e., Penal Code § 313 et seq.). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including Crawford v. Lungren, 96 F.3d 380 (9th Cir. 1996) and Berry v. City of Santa Barbara, 40 Cal.App.4th 1075 (1995).

J. While the City Council is obligated to protect the rights conferred by the United States Constitution to adult-oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult-oriented businesses.

K. Zoning and locational restrictions are a legitimate and reasonable means of helping to reduce the secondary effects from adult-oriented businesses and thereby protect the health, safety, and welfare of Oceanside residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods.
and businesses, and deter the spread of urban blight. The zoning and locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult-oriented businesses in Oceanside.

L. The City Council in recognizing that these standards do not preclude reasonable alternative avenues of communication and notes that the proliferation of adult-oriented material on the Internet, satellite television, direct television, CDs, DVDs, all provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as www.sugardvd.com and www.wantedlist.com, deliver adult videos and DVDs directly to customers' homes via the mail. The City Council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turnaround times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (Hustler Magazine, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; Anheuser-Busch v. Schmoke, 101 F.3d 325 (4th Cir. 1996) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; U.S. v. Hockings, 129 F.3d 1069 (9th Cir. 1997); see also U.S. v. Thomas, 74 F.3d 701 (6th Cir. 1996) [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions]. The Internet brings with it a virtually unlimited additional source of adult-oriented sexual materials available to interested persons in every community with a mere keystroke. An adult-oriented business no longer has to be "actually" physically located in a city to be available in the community.

M. The City Council recognizes that adult devices (i.e. adult novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (See Ford v. State of Texas, 753 S.W.2d 451, 452-453 (1988); Sewell v. State of Georgia, 233 S.E.2d 187, 188-189 (1977); Chamblee Visuals, LLC v. City of Chamblee, 506 S.E.2d 113, 115 (1998); and Red Bluff Drive-In, Inc. v. Vance, 648 F.2d 1020 (5th Cir. 1981).)

N. It is not the intent of the City Council in enacting this Ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Oceanside.

O. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City
Council to preempt regulations of the state Alcoholic Beverage Control Department ("ABC").

P. Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any other City ordinance in any respect, or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

Q. On September 12, 2016, the Planning Commission Council held a duly noticed public hearing during which it allowed for public input and testimony concerning this proposed Ordinance. At the conclusion of the public hearing the Planning Commission recommended this Ordinance to the City Council for approval.

R. On September 21, 2016, the City Council held a duly noticed public hearing during which it received input and testimony and considered the adoption of this Ordinance.

3601.2 Findings – Tattoo Establishments

A. The City Council has a reasonable basis to believe that there are land use compatibility issues relating the siting of tattoo facilities and their customers when located adjacent to residential uses. Through its zoning code provisions, the City of Oceanside seeks to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry, and encourage conditions that make the City of Oceanside a pleasant place to live and work.

B. The City Council has a reasonable basis to believe that it is important from a land use compatibility perspective to buffer tattoo facilities from sensitive land uses such as residential zones, schools, parks, and day care facilities while allowing a wide range of potential alternative sites and, as well, to have a buffer between regulated uses to prevent their concentration within one part of the City. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City; (2) protect the City’s retail and commercial trade; (3) minimize the potential for nuisances related to the operation of tattoo establishments; (4) protect the well-being, tranquility and privacy of the home with the residential buffer; and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.

C. The City Council also desires to avoid the clustering of tattoo establishments so that the City does not experience a significant change in the character of the community. Tattoo establishments have the potential to have a detrimental impact individually or when located in close proximity to each other, can create a “skid row” atmosphere, and have a deleterious effect upon adjacent areas. For example, Oceanside’s downtown area has been the subject of substantial redevelopment and the addition of new businesses that are attractive to families and tourists. It is important that the character of the downtown area remain family and tourist-oriented. The buffer restrictions applicable to tattoo establishments serves to preserve this interest. Furthermore, the area of south Oceanside

36-7
has seen a revitalization in the past several years and it is important that this residential zoned areas be preserved, and that adjacent neighborhood serving commercial and visitor serving establishments be preserved and maintained. The City recognizes that the tattoo establishments serve as a specialty destination service and accordingly, is not compatible to place such facilities within 500 feet of a residential zone because it would contribute to neighborhood blight and is not consistent with and would not serve to protect the commercial zones that are designed to offer the neighborhood needed commercial services.

D. The City’s certified Local Coastal Program ("LCP") provides that, “[i]n granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreation facilities over private residential, general industrial or general commercial uses”. According to the City’s Land Use Plan (LUP), a component of the LCP, the visitor serving commercial land use category “encompasses specialized commercial uses which are directly dependent supportive or related to the coast. Such uses provide services or goods for coastal industries or recreationalists, and include boat sales, supplies, and services; diving, commercial fishing, and sport-fishing establishments; restaurants, snack bars, and convenience markets; gift, sundries, and novelty shops; tourist-cottages, campgrounds, and recreational vehicle parks; and recreational equipment rentals (such as bicycles, roller skates, surfboards).” A tattoo establishment is not a visitor serving use. This Ordinance advances the City’s interest in implementing its LCP.

E. The City has a reasonable basis to believe, based on its own experience, along with those of other communities including Vista, Signal Hill, Santa Clara, Torrance, Hermosa Beach, and Ventura as to the secondary effects of tattoo establishments in its community may lead to detrimental effects including noise, light, traffic, and parking compatibility issues with neighboring residential zones. The City is aware of other communities experience and based on its own experience is concerned for the potential for criminal activity from tattoo parlors and their potential to attract the criminal element, especially gangs.

F. Specifically, the City takes note of the Oceanside’s Police Crime Analysis report dated July 27, 2016 that documents increased criminal activity from tattoo facilities in Oceanside. Such criminal activity is not compatible with adjacent residential uses. The City takes note that within Oceanside, since January 2013, Oceanside PD has received 34 Calls for Police Service (CFS) at Oceanside’s 3 tattoo parlors; About Face, Frontline and Body Temple. The About Face Tattoo shop is located downtown at 423 S. Coast Hwy and has generated the most CFS, with 17 calls between 2013 and July 2016. In addition, since January 2005, Oceanside PD has received 73 CFS at About Face Tattoo shop which accounts for 92% more CFS than the neighboring barbershop; and 564% more CFS than the neighboring day spa. CFS at all 3 tattoo shops include calls related to fights, public disturbances, property crimes, calls for violent activity; none of which are compatible with adjacent schools, daycares or residential zones. In one case, a known drug user was displaying a weapon which required police officers to deploy a taser in order to arrest the suspect.
G. The City Council also takes note of the August 2014 investigation of a felony battery at Power Tattoo located in the neighboring city of Vista where an individual was assaulted by 20-30 people at a tattoo facility event. In addition, the City of Santa Clara Police Department conducted a study on secondary effects of crime from regulated businesses, which include tattoo shops, and concluded that these shops can be a magnet for organized crime, gang activity, loitering, and increased police calls. And, the City also takes note that in May 2011, the Los Angeles Police Department and federal agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives, arrested nineteen alleged members of the gang Venice 13 at a tattoo parlor called ‘Villainz Ink’ that attracted a number of suspected criminal street gang members and associates who, in the course of a four-month investigation, sold illegal narcotics, committed numerous firearms violations, and sold a firearm to an ATF undercover agent.

H. The City Council has a reasonable basis to be concerned over the criminal activity associated at tattoo facilities affiliated with the outlaw gang known as the Hells Angels based on the City’s own experience and those of neighboring jurisdictions. The Hells Angels are involved in the production, transportation, and distribution of marijuana and methamphetamine. Additionally, the Hells Angels are involved in the transportation and distribution of cocaine, hashish, heroin, LSD (lysergic-acid diethylamide), ecstasy, PCP (phencyclidine), and diverted pharmaceuticals. The Hells Angels are involved in other criminal activity including assault, extortion, homicide, money laundering, and motorcycle theft.” https://www.justice.gov/criminal-ocgs/gallery/outlaw-motorcycle-gangs-omgs. Moreover, according to a 2015 report by the National Gang Intelligence Center (“FBI Report”), the most common criminal activities committed by outlaw motorcycle gangs over the past two years have included weapons possession, threats and intimidation, assault, and drug trafficking. The FBI Report documents a March 2014 incident in which two Hells Angels members sought medical treatment for stab wounds sustained during an altercation with rival gang members on a freeway near Temecula, California. The injured Hells Angels members were not willing to cooperate with law enforcement or say who was responsible for their injuries. According to the report, outlaw motorcycle gang members are increasingly involved in self-owned businesses (in particular tattoo parlors) and that some of these businesses are used to facilitate criminal activity. https://www.fbi.gov/image-repository/pub3 .jpg/view.

I. Zoning and locational regulations for tattoo establishments are necessary to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to minimize and control problems associated with such businesses and thereby protect the health, safety and welfare of Oceanside residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside. The City Council recognizes that these buffer requirements do not preclude reasonable alternative avenues of communication and that there are several hundred potentially available sites for tattoo establishments. And, Oceanside is already home to
three (3) existing tattoo establishments, a fourth is undergoing tenant improvements, and there is a wide menu of potential sites for other prospective users to select from in this seaside community.

J. The City is concerned as to the health and well-being of adolescents within the community and is aware of prior studies conducted which have shown an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare. The City Council has a reasonable basis to conclude that businesses offering tattoo services may result in negative impacts on sensitive uses, such as residential and educational institutions serving persons under 21 years of age. The City Council reasonably believes that in its community, a buffer from schools decreases the accessibility of such shops to high school aged persons. Similarly, in the south Ocean side area, minors are located in these adjacent residential zones and this buffer will serve to decrease the accessibility to minors as well. The prior study titled “Tattooing and High-Risk Behavior in Adolescents,” shows that this type of use (tattoo establishments) demonstrates a link between the tattooing of high school aged persons and a propensity to engage in other high-risk behaviors including gang affiliation, substance abuse, and violence. The Council takes legislative note of Sable Commission of California, Inc. v. FCC (1989) 492 U.S. 115 wherein the Court found that there is a compelling interest in protecting the physical and psychological well-being of minors.

K. The City of Oceanside has a reasonable basis to believe that there are serious health issues at play in the provision of tattoos. The City is aware that the practice of providing tattoos, through the use of implements which pierce the skin, create an increased risk of the transfer of blood borne diseases. Tattoo inks, dyes, and pigments have not been approved by the FDA and the health consequences of using these products are unknown. This applies to all tattoo pigments, including those used for ultraviolet (UV) and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers’ ink or automobile paint. And, the use of henna in temporary tattoos has not been approved by FDA. Henna is currently approved only for use as a hair dye.

L. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention (“CDC”) and the United States Food and Drug Administration (“FDA”) confirm the significant health risks of tattooing. CDC, Body Art: Tattoos and Piercings (Jan. 21, 2008) (noting risks of infection, tuberculosis, Hepatitis B and C, and HIV). FDA, Tattoos and Permanent Makeup (Nov. 29, 2000) (discussing the risks of infection, removal problems, potential allergic reactions, and MRI complications). Research has also shown that some pigment migrates from the tattoo site to the body’s lymph nodes. Lymph nodes are part of the lymphatic system, a collection of fluid-carrying vessels in the body that filter out disease-causing organisms. Whether the migration of tattoo ink has health consequences or not is still unknown. The National Center for Toxicalogical Research (NCTR) is doing further research to answer this and other questions about the safety of tattoo inks.
M. The City Council is mindful of legal principles relating to regulation of tattoo establishments, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse effects of tattoo establishments. The City Council has considered the following decisions: Anderson v. Hermosa Beach (9th Cir. 2010) 621 F.3d 1051; Buehrle v. Key West (11th Cir. 2015) 813 F.3d 973; Ward v. Rock Against Racism (1989) 491 U.S. 78; and City of Renton v Playtime Theaters (1986) 475 U.S. 41. As well, the City Council is mindful of the district court decision rendered this past June 2016 by USDC Stephen Wilson in the federal lower court matter of Tiffany Garcia v. City of Torrance.

3602 Regulated Uses

The uses subject to compliance with this Article are as follows:

A. Adult Bookstores/ Novelty Stores/ Video Stores
B. Adult Cabaret
C. Adult Entertainment Business
D. Adult Motel
E. Adult Motion Picture Theaters
F. Adult Theaters
G. Arcades and game Centers
H. Bars and Cocktail Lounges
I. Bath Houses
J. Body Piercing Establishments
K. Dance Establishments
L. Escort Services
M. Figure Studios
N. Liquor Stores
O. Massage Establishments
P. Medical Cannabis Facility
Q. Payday Loans/ Paycheck Advance Establishments
R. Peep-Show Establishments
S. Pool Rooms, Billiard Rooms, and Shooting Galleries
T. Tattooing Establishments
U. Tobacco and Drug Paraphernalia Establishments

Regulated Uses that have First Amendment protections shall require an Administrative Regulated Use Permit (ARUP) as called out in Section 3606. The balance of the Regulated Uses listed in this Section, shall require a use permit issued in accord with Article 41, however, the City Council shall have final authority to approve or disapprove the use permit.
3603 Definitions

The definitions appearing in Article 3 and the land use classifications appearing in Article 4 and 4a of this ordinance shall apply to any terms used in Article 36. The term “medical cannabis facility” shall have the same meaning in Oceanside City Code section 7.120.120 and shall include a medical cannabis cultivation facility, a medical cannabis nursery, a medical cannabis manufacturer and/or distributor but shall not include the term medical cannabis testing laboratory.

3604 Locational Requirements

A. It shall be unlawful for any Regulated Use to be located closer than one thousand (1,000) feet to any other Regulated Use, except as noted herein. This distance shall be measured in a straight line, without regard to intervening structures from the closest point on the exterior structure walls of each business.

The separation requirement in this section 3604(A) shall not be applied to prevent a medical cannabis manufacturer from engaging in medical cannabis distribution or a medical cannabis cultivator from operating a medical cannabis nursery at the same premises provided a state license and Local License is issued to allow both activities from the same premises or to require separation between medical cannabis cultivation facilities; medical cannabis nurseries, or medical cannabis cultivation facilities and medical cannabis nurseries located on the same or separate lots.

B. It shall be unlawful for any Regulated Use listed as Items A, B, C, D, E, F, M, P or R of Section 3602 to be located closer than one thousand (1,000) feet from any residential district or any parcel of land which contains any one or more of the following specific land uses:

1. Public or Private School;
2. Park, playground or public beach;
3. Church or other similar religious facility, and
4. Child care or pre-school facility.
   (Items 1-4 shall collectively be referred to as “the Sensitive Land Uses”)

It shall be unlawful for any Regulated Use not enumerated in this Section B to be located any closer than five hundred (500) feet from any residential district or any Sensitive Land Uses.

C. The Regulated Use enumerated as T (Tattooing Establishment) in Section 3602 above, shall not be located closer than five hundred (500) feet to any other tattooing establishment, or be located within five hundred (500) feet of any residential district or to any of the Sensitive Land Uses enumerated in Section 3604.B. 1, 2, or 4. No other locational requirements shall apply to tattooing establishments.

D. The distance between any Regulated Use and any residential district shall be measured
in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the use to the closest district line of any residential district. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (1) or (2) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point of the exterior structure wall of the regulated use to the closest point of the parcel line of such enumerated land use. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (3) or (4) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the Regulated Use to the closest point on the exterior structure wall of such enumerated land use.

3605 Waiver of Locational Requirements

Any person proposing a permitted Regulated Use (other than a medical cannabis facility) as listed in Section 3602 may apply for a waiver of the locational requirements provided in Section 3604, except that no waiver shall be available where the proposed Regulated Use is subject to Section 3606 or is otherwise afforded First Amendment Protections. Such waiver application shall be filed and processed concurrently with the conditional use permit entitlement request, if applicable, for the proposed use. The City Planner shall set the use permit application, and/or the waiver application, for public hearing before the Planning Commission or Community Development Commission as the case may be, provided that at least ten (10) days written notice of such hearing is given to owners and occupants of all property lying within all applicable distances set forth in the locational requirements.

The Planning Commission shall make recommendations to the City Council for the approval or disapproval of such waiver. No waiver shall be approved unless all of the following findings are made regarding the proposed use:

1. It will not be contrary to the public interest.
2. It will not be contrary to the spirit or intent of this Article.
3. It will not impair nearby property or the integrity of the underlying district.
4. It will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

3606 First Amendment Application – Administrative Regulated Use Permit

A. Approval of a Regulated Use protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution shall require approval of an Administrative Regulated Use Permit (ARUP) by the City Planner and shall not require approval of a Conditional Use Permit (CUP). The ARUP shall be approved by the City Planner provided:

1. The proposed use is allowed by Articles 11, 12 and/or 13 of the Zoning
Ordinance;
2. The proposed use meets the locational requirements in Section 3604; and
3. The proposed use meets the operational requirements, if any, set forth for such
   proposed use in the Oceanside City Code or any other provision of law. No
   waiver of the locational requirements shall be permitted.

B. The City Planner shall determine within ten (10) business days whether the ARUP
   application is complete. The City Planner’s decision to approve or deny the ARUP
   application shall be made within sixty (60) days after the application is complete. The
   City Planner’s decision shall be deemed final for purposes of this section upon the date
   it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or
   certificate of mailing, to the applicant and all adjacent property owners within five
   hundred (500) feet of the proposed Regulated Use, as measured in accordance with
   Section 3604.D. The final City Planner’s decision shall not be subject to any
   administrative appeal. Judicial review of the City Planner’s decision shall be in
   accordance with the procedures set forth in the California Code of Civil Procedure
   section 1094.8.

3607 Applicability of Other Regulations

The provisions of this article are not intended to provide exclusive regulation of the
regulated uses. Such uses must comply with any and all applicable regulations imposed in
other articles of this zoning ordinance, other city ordinances, and state and federal law.

3608 Severance Clause

If any section, sentence, clause, or phrase of this ordinance is for any reason held to be
unconstitutional, such decision shall not affect the validity of the remaining sections,
sentences, clauses, or phrases of this ordinance, or the ordinance in its entirety, it being the
legislative intent that this ordinance shall stand notwithstanding the invalidity of such
section, sentence, clause or phrase.
DATE: June 20, 2018

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office/Police Department

SUBJECT: REPORT BY OCEANSIDE POLICE DEPARTMENT ON POTENTIAL DISPENSARY IMPACTS

SYNOPSIS

Staff recommends that the City Council receive a report from Frank McCoy, Police Chief, regarding potential dispensary impacts, and provide direction to staff.

BACKGROUND

On March 28, 2018, the City Council reviewed the 1) Medical Marijuana Ad Hoc Committee recommendations, 2) City Advisory Group comments, and 3) Staff recommendations; and took the following action regarding medical marijuana regulations:

Motion to introduce the ordinance amending the Zoning Ordinance and Chapter 7 of the Oceanside City Code as recommended by staff with the following modifications:

1. Commercial cultivation will be allowed in the Ag zone as a regulated use subject to a CUP and local license not to exceed 20 percent lot coverage or 22,000 square feet, whichever is less.
2. No medical cannabis dispensaries will be allowed at this time. All references to the term medical cannabis dispensary or dispensaries in Exhibits A and B are stricken. (Exhibit A: strike "NN" in article 4, page 4-15; strike the term medical cannabis dispensary in article 11, page 11-5, and condition L34 on page 11-11; strike condition L-24 in article 13, page 13-4; strike term medical cannabis dispensary on page 13-4; strike the term medical cannabis dispensary in section 3603 on page 36-12 Exhibit B: strike the term medical cannabis dispensary in proposed OCC sections 7.115, 7.117 and 7.126L).
3. Medical Cannabis deliveries will remain subject to the conditions as set forth in current OCC chapter 7 article XIII;
4. No application for commercial cannabis facilities will be accepted by the City until the City Council has established regulatory fees. (Approved 4-1)

On April 11, 2018, the City Council adopted the ordinance amending the Oceanside Comprehensive Zoning Ordinance and Chapter 7 of the Oceanside City Code to update regulations concerning commercial cannabis uses and allow the establishment and operation of specified commercial cannabis facilities only in designated zoning districts
east of the coastal zone boundaries, subject to conditions and limitations (Approved 3-2). Also on April 11, the City Council moved to have a workshop on June 20, 2018, to discuss the 1,000 foot set back, the 1 unit per APN number and to have a report from the Oceanside Police Department regarding dispensaries (Approved 3-2).

On May 23, 2018, the City Council approved resolutions to establish regulatory fees and application format for commercial medical cannabis facilities and to approve an application for authorization to access state and federal level summary criminal history information for employment, volunteers and contractors licensing or certification purposes. Additionally, Council authorized an initial application period of June 25 to October 1, 2018, for the first batch of commercial medical cannabis facility applications, with an open application period without an end date thereafter (Approved 4-1).

ANALYSIS

A medical cannabis dispensary, also known as a retail operation, is a facility wherein medical marijuana/products are offered, individually or in any combination for retail sale, including deliveries. The Medical Marijuana Ad Hoc Committee recommended permitting medical marijuana dispensaries in the Community Commercial (CC), Special Commercial – Highway Oriented (CS-HO), Industrial Limited (IL) and Industrial General (IG) zones as a regulated use subject to a Conditional Use Permit (CUP). Additionally, medical marijuana dispensaries would be limited to 1 per 40,000 residents. Given Oceanside’s current population of 177,362, a maximum of four dispensaries would be allowed until the population reaches 200,000 residents.

Attached is a memorandum from Police Chief Frank McCoy outlining the information he obtained from contacting other Southern California Police Departments wherein Medical Marijuana Dispensaries were legally authorized to operate during 2017. The Police Chief will review this information at the workshop.

On March 28, 2018, staff recommended that the City Council could start with a maximum of two dispensaries and evaluate their performance after twelve months of operations to determine whether to increase to a maximum of one dispensary per 40,000 residents. The City Council chose to not allow medical marijuana dispensaries at this time, and all references to medical marijuana dispensaries were struck from the proposed ordinance. The Medical Marijuana Ad Hoc Committee’s recommended medical marijuana dispensary regulations are contained in the March 28, 2018 staff report attached hereto. Staff recommends that the City Council receive the report from Frank McCoy, Police Chief, regarding potential dispensary impacts, and provide direction.

FISCAL IMPACT

Does not apply.
INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY’S ANALYSIS

Does not apply.

RECOMMENDATION

Staff recommends that the City Council receive a report from Frank McCoy, Police Chief, regarding potential dispensary impacts, and provide direction to staff.

PREPARED BY:                     SUBMITTED BY:

Deanna Lorson                        Michelle Skaggs Lawrence
Assistant City Manager               City Manager

REVIEWED BY:

Frank McCoy, Police Chief

Attachment:
1. Memo from Frank McCoy, Police Chief
MEMORANDUM
from the
Office of the Chief of Police

TO: City Council
VIA: Michelle Lawrence, City Manager
FROM: Frank S. McCoy, Chief of Police
SUBJECT: Medical Marijuana Dispensary Information
DATE: June 13, 2018

On April 11, 2018, the City Council requested the Police Department to provide information on potential impacts that a Medical Marijuana Dispensary could have on crime, resources and staffing. This information will form the basis for discussion at the June 20, 2018 workshop.

In an effort to obtain the best information that would be both relevant and meaningful, I solicited information from other Southern California Police Departments whereby Medical Marijuana Dispensaries were legally authorized to operate during 2017. Recreational dispensaries were not legal to operate until January 2018. These cities included San Diego, Los Angeles, Long Beach, and Santa Ana. Each police department was provided a list of questions to answer in an effort to determine what specific impacts, if any, legal Medical Marijuana Dispensaries may have had on their communities and the challenges posed for their departments.

Below you will see the specific question asked and the response from the representative police department:

How many legal medical marijuana dispensaries did you have in your City prior to January 2018?

Los Angeles: 150 to 180
Long Beach: 3
Santa Ana: 18
San Diego: 12

Can you provide a breakdown on the number and type of calls for service your department responded to in relation to the dispensaries?
Los Angeles: Calls that involved dispensaries were not specifically tracked. There were two Premise Codes which were used to track crimes which showed 162 crimes for last year. This system was not comprehensive and many crimes were not tracked therefore those numbers are vastly under reported.

Long Beach: There is no data at this time to show an increase or calls related to dispensaries. At this time, Long Beach does not track calls for service in this manner but the department is looking into the ability to track crimes related to marijuana business.

Santa Ana: We do not currently have a way in place of tracking these types of calls.

San Diego: In San Diego we have already had multiple crimes to our legal and illegal dispensaries including homicide, burglary and robbery amongst other crimes. *They provided a chart listing the addresses of (10) dispensaries with a total of 272 calls for service in 2017.

Have you noticed any crime data changes in property or violent crimes in the area where dispensaries are currently located? Can you provide yearly statistical data on these crime comparisons?

Los Angeles: 2017 showed a total of 162 crimes for the entire year. During 2018, there have been 35 violent crimes and 36 Property crimes, totaling 71 crimes during the 1st quarter alone. Anecdotally, it appears there is an increase in crime however there is direct evidence that some crimes are not being captured using crime codes and we are aware that many crimes go unreported when it occurs at an illegal dispensary.

Long Beach: There is no data at this time to show an increase or calls related to dispensaries. At this time, Long Beach does not track calls for service in this manner but the department is looking into the ability to track crimes related to marijuana business.

Santa Ana: We have not noticed a measurable difference in crime around our dispensaries.

San Diego: Anecdotally we have seen an increase in armed robberies of delivery drivers and some burglaries of the legal dispensaries. Beyond that, SDPD does not have any statistical data beyond the radio call info (above) on an increase in crime stats due to dispensaries.

What have been the biggest challenges for your department since allowing dispensaries to operate in your City?

Los Angeles: Many of the laws are written vaguely, subject to interpretation, and granting many exceptions. The additions from SB 94 and AB 133 made many
amendments to Prop 64 which were not voter initiatives. With lenient laws, apathy from prosecutors, and no real enforceable deterrence, illegal locations continue to proliferate while many community members have complained, “This is not what I voted for.” Organized Crime has taken significant interest in the industry and there is little enforcement that can deter them. Low risk and High Reward in the form of monetary gain make this a lucrative black market business. Coupled with limited resources, the probability of significant increase in Part I crimes are high.

**Long Beach:** The biggest challenge to this point has been the time for licensing and backgrounds, researching best practices and preparing officers for their role in legalized marijuana.

**Santa Ana:** Over the past few years, the largest issue has been the eradication of the illegal dispensaries. We were met with a lot of opposition regarding the prosecution of the crimes on the State side. Our current model of working with Code Enforcement and the City Attorney’s Office with inspection/abatement warrants for the properties seems to now be effective. If an illegal dispensary is located during the service of the abatement warrants, a criminal search warrant is authored by the vice/narcotics unit. Any cannabis related products and cash proceeds are seized pursuant to the search warrant and the City Attorney’s Office and Code Enforcement work with the utility companies to turn off water and power. Focusing on the owners of the properties in regards to administrative fines has also been helpful.

**San Diego:** The City of San Diego currently has 13 legal marijuana dispensaries that are open and operating. All 13 can sell both medical and adult use marijuana. Our statute caps the amount of dispensaries we can have at 36 city wide, however, the city council just authorized 40 additional manufacturing and cultivation facilities to operate in addition to the 36 dispensaries. With all of this has come a large increase in the black market. The SDPD’s biggest single problem is trying to eliminate the black market. Over the past 2 years we have used significant time and resources to reduce the 80+ illegal dispensaries in our city down to about 1 or 2 that currently operate. But as we got rid of the black market dispensaries, 100+ black market delivery services have popped up in their place which we are now trying to tackle. We have had to form a Marijuana Enforcement Team (1 Sgt, 4 detectives) within the Narcotics Unit to deal with this increase. These are detectives that could otherwise be out there enforcing Fentanyl, Cocaine, Meth, etc...so the black market has probably been the biggest negative issues for the police department that has come from allowing the legal industry to operate in the city. To put the resource and time requirements for this in perspective, Since April 2016 SDPD Narcotics has had to conducted over 60 Search warrants on illegal dispensaries and delivery services resulting in the arrest and or citation (and prosecution) of over 90 suspects and the seizure of 24 guns, $400,000 in cash, and over 1,000 pounds of marijuana. The personnel hours spent for all of these operations is in the thousands.
Have you had to add or divert police resources to deal with dispensary and/or marijuana related issues? If so, how many personnel have you added and/or diverted? Has this been enough to deal with the added workload? If additional resources or personnel were added are they engaged in enforcement, regulation or both?

**Los Angeles:** At this time, at least 2 civilians and 1 sworn supervisor have been diverted from the LAPD Commission Investigation Division to deal with regulation. At least 42 search warrants have been served year to date with an additional 21 anticipated as a result of City initiatives to enforce illegal storefronts. A variety of resources from 21 geographic areas, primarily the Area Narcotics Enforcement Details (NEDS) have been diverted to work on these locations. These NEDs have been working to keep up with the workload while being affected by a decrease in resources as a result of Office of Operations Notice dated February 15, 2018, *Reduction of Narcotic Enforcement Details (NED) Authorities.*

Several other activities, such as Live Scan screening of applicants has not been decided within the City family so it is undetermined if, and how many LAPD personnel will have to screen through Live Scans as part of the regulatory process.

**Long Beach:** The department has added five part time civilian backgrounders supervised through the Vice Detail. The department also has a seat within the city’s cannabis management working group which consists of multiple city departments. The department is considering increasing narcotics detectives as recreational use increases with opening of recreational dispensaries moves forward in the city.

**Santa Ana:** Our City Council authorized five new detectives and a sergeant for the investigation and prosecution of illegal dispensaries, and to conduct inspections of the legal ones. In addition to police personnel, the City added funds for two Code Enforcement inspectors, and an assistant City Attorney for prosecution, as part of the Cannabis Team.

**San Diego:** We have had to create a Marijuana Enforcement Team consisting of one sergeant and four detectives. These are the lead investigators on all our MJ cases. In addition, when we have to go serve a search warrant on an illegal MJ business we utilize the entire Narcotics unit (17 detectives and 5 Sgts). This staffing level has not been enough to deal with enforcement of the black market MJ businesses.

*How much of a challenge has the “Black Market” been for your department? Do you see an increase in illegal dispensaries and are you being pressured to shut them down by legal dispensaries? If so, what type of cooperation are you getting from the District Attorney’s Office or are you having to use your own City Attorney to deal with these issues?*
Los Angeles: The “Black Market” has been an exceptional challenge and legal cannabis businesses have been pressuring to shut down the illegal locations. There are between 300-600 illegal locations the City is aware of. The Police Department is aware of over 300 locations year to date while the City of Los Angeles Office of Finance has reported over 600 businesses paying taxes on their cannabis businesses, even though only 142 have been authorized.

Unfortunately, cooperation from the DA’s office has been non-existent with several prosecutors and prosecuting supervisors advising case agents that when they bring a case involving cannabis it is a waste of our time and theirs. At least one investigative unit had a search warrant declined by a judge. Currently the only prosecutions being followed through have been through the City Attorney’s Office and it has been a fraction of the cases presented due to limitations on the number of cases that can be heard each day.

Long Beach: We have seen several illegal dispensaries open and pressure to close these facilities, most of which are being handled through administrative processes. There is great cooperation with the City Attorney’s Office on cannabis related issues.

Santa Ana: We started in 2014 with a huge influx of illegal dispensaries. Over the years we have varied from 140 illegal dispensaries down to as low as five. We are going to try and re-visit using the District Attorney’s Office addressing the current change in laws regarding recreational use, but have been utilizing the City attorney’s Office.

The current legal dispensaries often complain about the illegal dispensaries and expect the city (code enforcement / police department) to regulate and shut down the illegal dispensaries.

San Diego: A big part of our success against the Black Market is working with our City Attorney office who is as dedicated to prosecuting these illegal businesses as we are to doing enforcement. I cannot over emphasize how important it is to have a prosecuting agency fully on board that is willing to do the follow up prosecution. It is my belief (based on a 2 years of trial and error) that without this prosecutorial cooperation, you will not be successful in removing the illegal industry from your city. If you want more detailed info on the prosecution side, please contact Chief Deputy City Attorney Mark Skeels. He is an excellent resource and very knowledgeable on these type of prosecutions.

In general, what type of crime or quality of life issues have you seen increase with the approval of dispensaries in your City? (Ex. Increased robberies, increased black market, increased loitering, increased homeless population, etc.)

Los Angeles: The following crime or quality of life issues have been identified in our City:

- Increased Robberies, Burglaries, and thefts (not including many unreported robberies and burglaries we are learning of).
- Increased driving while under the influence of drugs
• Increased number of organized crime interests in cannabis storefronts, ie Outlaw Motorcycle Gangs in South Los Angeles Cannabis Storefronts, Hoover Criminals Street Gang members, Russian-Armenian Mafia, and taxation by the Mexican Mafia.
• Increase in Homelessness
• Notable increase in teens bringing cannabis into the school
• Increase in complaints from the community about the increase in locations.

**Long Beach:** Again, the department does not have the ability to track crimes based on cannabis legalization; however, research is being done to determine some sort of tracking mechanism.

**Santa Ana:** The major quality of life issues we have faced has been an increase of the illegal dispensaries in and around residential areas. Residents complain about loud noise, trash, and drug use on the streets in front of their houses. These illegal dispensaries are also a target-rich environment for commercial robberies and burglaries, however, a large majority of them go unreported.

**San Diego:** We have seen increased in the following: Black market, robberies of delivery drivers, additional calls for service, surrounding business and residence complaints about: traffic, lines, smoking near legal dispensaries.

*What is your agency’s role in the licensing and administering of dispensaries in your jurisdiction?*

**Los Angeles:** Currently, the LAPD’s only role in licensing and administering of dispensaries in our jurisdiction is in the initial pre-license inspection by Commission Investigation Division which will cease once the Department of Cannabis Regulation (DCR) hires and trains their personnel to take over the task.

Discussions are currently taking place as to who will conduct Live Scan screenings for pre-licenses checks. The DCR would like to see LAPD take on this task but has been agreeable to accepting help to stand up their own process with their own personnel with LAPD’s training and assistance. No other roles in licensing and administering exists for the LAPD.

**Long Beach:** The department handles the LiveScan of operators seeking licensing and conducts full backgrounds on each (owners and managers). The department is also part of a city cannabis management working group with multiple city departments.

**Santa Ana:** When Medicinal Marijuana’s were first licensed in the city, the licensing fell under the Police Department and Chief of Police. Recently the municipal code has changed, transferring the lead agency responsible for licensing and administering dispensaries to the Building and Planning Department. The Police Department is still responsible for the background investigations of the prospective employees of the dispensaries.
**San Diego:** Because MJ is still illegal under Federal law, SDPD does not regulate the legal marijuana industry. That falls under the jurisdiction of the Department of Development Services and Code Compliance.

**Summary:**
Based on the information provided by the surveyed police departments, it appears that opening Medical Marijuana Dispensaries will directly impact police resources, however, the specific extent of those impacts is hard to validate at this time. Each surveyed police department has either added or diverted resources to address issues associated with the opening of dispensaries and responding to complaints of black market locations. Other than San Diego, the other departments have not developed a tracking mechanism to capture dispensary related call data at this point. It is therefore, still too early to be able to evaluate specific impacts of opening dispensaries in a community.

The Police Department maintains its original recommendation that our City not open a dispensary at this point, but continue to allow the delivery of Medical Marijuana to meet the needs of those in our community. This will allow time for those cities with dispensaries to capture more information and data relating to dispensary impacts on both the community and police resources. At that time, our Department can then return with meaningful recommendations to ensure that any dispensaries opened in our City will be able to meet the needs of those desiring Medical Marijuana, as well as address the overall safety of our community.
ITEM NO. 16

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 28, 2018

TO: Honorable Mayor and City Councilmembers

FROM: City Manager’s Office

SUBJECT: Council Ad-Hoc Committee Recommendations and Staff Analysis Regarding Medical Marijuana Businesses

SYNOPSIS

Staff recommends that the City Council review the 1) Medical Marijuana Ad-Hoc Committee recommendations, 2) City Advisory Group comments, and 3) Staff recommendations; and introduce an ordinance amending the Oceanside Comprehensive Zoning Ordinance (aka 1992 OZO) and Chapter 7 Article XIII of the Oceanside City Code. The purpose of the amendment is to update regulations concerning commercial cannabis uses and allow the establishment and operation of specified commercial medicinal cannabis facilities only in designated zoning districts located east of the coastal zone boundaries, subject to conditions and limitations. The amended text will introduce new land use classifications (Article 4), will update commercial (Article 11), industrial (Article 13) and agricultural (Article 14) zoning district regulations and will modify regulated use provisions (Article 36). City Code Chapter 7 Article XIII, as proposed to be amended, will set forth the criteria and procedures for permits and licenses necessary to establish and operate commercial medicinal cannabis facilities within the City of Oceanside.

BACKGROUND

In 1996 California voters approved Proposition 215, the Compassionate Use Act of 1996 which allowed the use of marijuana (aka cannabis) for medical purposes. In 2015 the California legislature enacted the Medical Marijuana Regulatory & Safety Act (MMRSA) which established a licensing and regulatory framework for commercial cultivation, manufacturing, transportation, distribution, and sale of medical cannabis for those 18 and older. MMRSA went into effect January 1, 2016. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA established a licensing and regulatory framework for commercial cultivation, manufacturing, distribution, and sale of cannabis for those aged 21 and older. Proposition 64 was approved by 56.9% of Oceanside voters.

After passage of Proposition 64, the State of California developed a licensing framework for marijuana businesses. The framework includes 36 different licenses, of which 18 are for various types of medical marijuana businesses. The State standards are minimum standards, local jurisdictions can adopt more stringent standards or prohibit all
types of cannabis businesses within jurisdictional boundaries, except for limited personal cultivation which local governments may reasonably regulate but not prohibit. Oceanside currently bans all types of marijuana businesses with the exception of medical marijuana deliveries which may be permitted from a dispensary located outside the City of Oceanside with a business license and written approval from the city attorney and police chief subject to specified conditions.

On April 19, 2017, the City Council designated an ad-hoc committee to explore possible regulations allowing for medical marijuana businesses in Oceanside. The ad-hoc committee included Deputy Mayor Chuck Lowery serving as committee Chair, and Councilmember Jerry Kern serving as Vice Chair. The ad-hoc committee held eight public meetings, took tours of medicinal cannabis production facilities, and met with industry experts. On December 20, 2017, the ad-hoc committee presented their report to the City Council and asked the City Council to receive the report and recommendations and forward the recommendations to appropriate staff and advisory boards/commissions for review and comments to be brought back to Council for adoption at a later date. After discussion, the City Council referred the recommendations to staff and advisory boards/commissions for review and comments on a vote of 3-1 (Sanchez voting no) with a provision that the recommendations focus solely on “Medical” Marijuana. The ad-hoc committee's report is attached as Attachment “C”.

**ANALYSIS**

The ad-hoc committee recommended that the City allow for the following types of medical marijuana activities: cultivation, distribution, manufacturing, retail operations (i.e. dispensaries), testing labs, and nurseries. All of these uses, with the exception of testing labs and nurseries, would be considered regulated uses subject to additional requirements as outlined below. Following is description of each business type, the regulations proposed by the ad-hoc committee, and staff's analysis. This information is also portrayed in a matrix format as Attachment “D”.

It should be noted that the Police Chief and Fire Chief provided additional comments, attached as Attachments “E” and “F”, outlining their concerns with all types of marijuana businesses. The Police Chief is concerned with increased crime including extortion, theft and robberies of businesses, homes and employees due to the product and cash-only nature of all marijuana businesses, increased loitering, panhandling, homelessness and thefts associated with marijuana dispensaries, and increased incidents of driving under the influence (DUI) and traffic accidents related to marijuana DUIs. The Fire Chief is concerned with increased marijuana related medical calls and ambulance transports, vehicular accidents caused by impairment, exposure to smoke and residue if a fire occurs at a cannabis facility, and lifeguard enforcement of medical marijuana smoking on the public beach.

**Cultivation.** Cultivation is defined as a facility where medical cannabis is propagated, planted, grown, harvested, dried, cured, tagged for tracking or trimmed, or any combination thereof. The ad-hoc committee proposes that medical marijuana
cultivation be permitted in the Agricultural (A) zone as a regulated use requiring both a Conditional Use Permit (CUP) and an Agricultural Activity Permit. Cultivation must be within a fully enclosed, secure structure with no light source visible from the public right of way or any adjacent property.

Staff recommends that medical cannabis cultivation facilities not exceed, either individually or combined, the lesser of either 10% coverage or 22,000 square feet per existing legal lot. These recommendations would ensure that the agricultural character of South Morro Hills is preserved, a balance of agricultural uses is maintained, and would minimize conflicts with the ongoing agritourism effort. Staff also recommends that such businesses only be subject to the approval of a CUP with no Agricultural Activity Permit required as all operational standards typically associated with an Agricultural Activity Permit would be incorporated into the CUP’s conditions of approval.

Manufacturing. Manufacturing is the production, preparation, propagation and compounding of medical cannabis/products without the use of a volatile solvent. It includes extracting, infusion, preparation of edibles, and the packaging and labeling of products but excludes cultivation. The ad-hoc committee’s recommendation would permit nonvolatile manufacturing of medical cannabis in the Industrial Limited (IL) and Industrial General (IG) zones as a regulated use subject to a Conditional Use Permit (CUP).

Staff agrees that medical marijuana manufacturing activities are appropriate as a regulated use in the IL and IG zones subject to a CUP and Local License. Local License requirements are described later in this staff report.

Distribution. Distribution is defined as a location where medical cannabis/products obtained from a licensed medical cannabis cultivator or manufacturer is temporarily stored, prior to delivery to a medical marijuana dispensary. The ad-hoc committee proposes to permit medical marijuana distribution in the Industrial Limited (IL) and Industrial General (IG) zones as a regulated use subject to a Conditional Use Permit (CUP).

Staff agrees that medical marijuana distribution activities are appropriate as a regulated use in the IL and IG zones subject to a CUP and Local License.

Medical Cannabis Dispensary. A medical cannabis dispensary, also known as a retail operation, is a facility wherein medical marijuana/products are offered, individually or in any combination for retail sale, including deliveries. The ad-hoc committee recommendation is to permit medical marijuana dispensaries in the Community Commercial (CC), Special Commercial – Highway Oriented (CS-HO), Industrial Limited (IL) and Industrial General (IG) zones as a regulated use subject to a Conditional Use Permit (CUP). Additionally, medical marijuana dispensaries would be limited to 1 per 40,000 residents. Given Oceanside's current population of 176,461, a maximum of four dispensaries would be allowed until the population reaches 200,000 residents.
Dispensaries are the only medical marijuana business that are open to the general public, all other types of proposed marijuana businesses are wholesale or business-to-business type operations with controlled access. As such, dispensaries have the greatest potential to create a nuisance and attract crimes of opportunity such as loitering, panhandling, carjacking, and theft. Additionally, dispensary owners and employees are vulnerable to the same types of crimes anticipated with all types of marijuana businesses, such as extortion and robbery. Due to the public nature of dispensary operations, staff has the greatest concern with this proposed use. While the regulated use separation requirements and limits on the number of dispensaries somewhat mitigate these concerns, staff remains concerned about the negative impacts associated with these uses. The CC, CS-HO, IL and IG zones allow and are home to a number of youth and family oriented businesses that are not designated as sensitive uses, such as commercial recreation and entertainment facilities (theaters, sports facilities such as batting cages, arcades, and the like), and retail businesses such as toy stores, grocery stores, hobby stores, and sporting goods.

Staff understands the desire to serve the medical marijuana needs of Oceanside residents by providing the opportunity for medical marijuana dispensaries to locate in Oceanside. However, in order to evaluate the impacts generated by actual medical marijuana dispensaries, the City Council could start with a maximum of two dispensaries and evaluate their performance after twelve months of operations to determine whether to increase to a maximum of one dispensary per 40,000 residents.

**Testing Laboratories.** A testing laboratory is an independently accredited and State licensed facility that offers or performs tests of medical cannabis/products. In the ad-hoc committee proposal, medical marijuana testing laboratories are not considered a regulated use and would be permitted in the Community Commercial (CC), General Commercial (CG) and Special Commercial – Highway Oriented (CS-HO) zones subject to an Administrative Conditional Use Permit (ACUP).

Staff recommends that medical marijuana testing labs be restricted to the Industrial Limited and Industrial General zones subject to an Administrative Conditional Use Permit (ACUP). This recommendation is based on the fact that testing labs are a “back office” type operation with no customer visits. Generally, other types of laboratories are classified as limited industrial and locating these uses in industrial zones will make it less likely that they will be located near businesses patronized by children and families.

**Nursery.** A nursery is a facility that produces only clones, immature plants, seeds and other agricultural products specifically for the propagation and cultivation of medical cannabis. The ad-hoc committee recommendation is that medical marijuana nurseries are not considered a regulated use and nurseries of any size would be allowed in the Agricultural (A) zone with an Administrative Conditional Use Permit (ACUP). Additionally, medical marijuana nurseries no larger than 1,000 square feet would be allowed in the Community Commercial (CC), General Commercial (CG), Special Commercial – Highway Oriented (CS-HO), Industrial Limited (IL) and Industrial General (IG) zones subject to an Administrative Conditional Use Permit (ACUP).
Staff recommends that medical cannabis nurseries be classified as a regulated use limited to the Agricultural zone, and not exceed, either individually or combined, the lesser of either 10% coverage or 22,000 square feet per existing legal lot. This recommendation is based on the fact that nurseries do not involve retail sales to the consumer and their primary functions are more consistent and compatible with agricultural rather than commercial uses. Additionally, the production of seeds inherently involves the cultivation of mature plants and cultivation is limited to the A zone.

**Regulated Uses.** The ad-hoc committee recommends that most medical marijuana businesses, with the exception of nurseries and testing labs, be classified as regulated uses. As such, regulated uses have separation requirements of 1,000 feet from other regulated uses and residential zones, schools, parks, churches and child care facilities.

Staff recommends that the separation requirements also be extended to youth-oriented land uses such as public libraries, youth clubs and community facilities such as public swimming pools and gymnasiums. This requirement will be implemented as part of the Local License process (discussed below) whereby the applicant for a medical cannabis dispensary will need to demonstrate that they are located at least 600 feet from any business catering to families, such as commercial recreational uses, theaters, grocery stores or sporting goods stores. Additionally, staff recommends that regulated medical cannabis uses be excluded from the ability to obtain a waiver of the regulated use locational requirements. This would ensure that sensitive uses are protected from medical marijuana uses.

**Local License Requirements.** In addition to receiving a CUP or ACUP as outlined above and the appropriate State license, all medical marijuana business will be required to obtain a Local License issued by the City Manager or designee. This local license would require a written background check by the Oceanside Police Department, including a criminal background check of operators and employees, documentation of possession of the premises (deed, lease or equivalent), an operating plan, and indemnification, insurance naming city as an additional insured, agreement to defend the City, and assumption of all liability. The Operating Plan shall include the floor plan, employee list, 3rd party tracking software, security plan, video surveillance, alarm system, designated signage, lighting, commercial grade locks, and on site security 24/7.

Staff recommends the addition of a standard that the City Manager or designee can deny issuance of or revoke a local license if “Issuance of the license would impair the health, safety or welfare of the public, cause negative impacts to property values, cause odor created by medical cannabis plants to impact adjacent properties, impair the City’s ability to prevent crime associated with medical cannabis, and/or impair the City’s ability to ensure that medical cannabis grown, manufactured or sold remains secure and does not find its way to minors, or illicit markets.” This requirement is currently a requirement for employee permits and should also be extended to the local license.

**Employee Permits.** All employees would need an employee permit issued by the City Manager or designee in order to work in a medical marijuana business. This permit
would only be available to those aged 21 years and older and would require a criminal background check, fingerprints, and no conviction within the preceding ten years for possession of a controlled substance for sale, sale of a controlled substance, a violent crime, or a “strike” crime.

**Signage.** The ad-hoc committee recommendations do not address signage therefore the general signage requirements for the respective locations/ zones would apply.

*Staff recommends that signage be limited to the business name and address, with no logos, advertising, banners, green crosses or similar insignia. This will ensure that the presence of medical cannabis businesses does not detract from surrounding businesses and minimizes exposure to minors from these types of businesses.*

**Next Steps.** The information contained in this staff report was presented to the Police and Fire Commission on February 20, 2018. After receiving testimony from 18 members of the public including 11 in support of medical marijuana and 6 opposed, the commission had a variety of questions and concerns. They were particularly concerned about Federal prohibitions, public safety impacts and safety of medical marijuana for patients. While they were asked to provide feedback to be shared with the City Council, they unanimously approved (5-0) a motion to not recommend sending the Medical Marijuana Ad-hoc Committee’s recommendations to the City Council.

This report was presented to the Economic Development Commission on March 1, 2018. After receiving testimony from 12 members of the public including 8 in support of medical marijuana businesses and 4 opposed, the commission had a variety of questions concerning the economic impacts of medical marijuana businesses, taxation, banking, and the permitting process. The Chairman of the Economic Development Commission summarized the Commission’s comments as the following three concerns/recommendations:

1. Zealously guard the City’s image and reputation;
2. Take a measured approach including thoughtful research on impacts in other jurisdictions; and
3. Develop and deploy a taxing structure prior to issuing any permits.

This report was presented to the Planning Commission on March 12, 2018. After receiving testimony from 22 members of the public including 17 in support of medical marijuana businesses and 5 opposed, the Planning Commission voted unanimously (7-0) to recommend that the City Council approve amendments to the Zoning Ordinance and Oceanside City Code to set forth regulations for the establishment and operation of medical cannabis facilities. They would also like the City Council to consider increasing the number of dispensaries to 1 per 20,000 population, increasing the lot coverage requirement for agricultural cultivation from 10% to 20%, and allowing waivers of the locational requirements for regulated uses.
Implementation of the Council ad-hoc committee’s recommendations will require City Council adoption by ordinance. If adopted on March 28, 2018, the ordinance would become effective on May 11, 2018.

Staff further recommends that an annual report be submitted to the City Council reporting on medical marijuana business activity in Oceanside. This would include the number of licensed and permitted facilities, their current status, and any impacts associated therewith.

**FISCAL IMPACT**

Medical marijuana businesses will generate minimal revenue for the City of Oceanside. This is due to the fact that the City cannot impose a tax on marijuana businesses unless it is approved by the voters. In the absence of voter approval of new local taxes on marijuana businesses, the only local taxes which apply to these businesses are the standard property tax, sales tax, and business license tax that apply to other business types. Sales tax is not applicable if a medical marijuana business requires patients to produce a medical marijuana card issued under H & S Code 11362.71 (issued by Health Departments) and a valid government-issued ID.

Most cities with voter-approved cannabis taxes have a cultivation tax ranging from $1 to $25 per square feet of cultivation and a gross receipts tax of 5-15% of gross receipts. The City of San Diego has an initial gross receipts tax of 5%, increasing to 8% on 7/1/2019 and a voter approved maximum of 15%. Recent reports indicate the City of San Diego is projecting revenue of $5.5 million annually to start, growing to $13.7 million in FY 2022/23. San Diego’s population is approximately eight times that of Oceanside, and they allow both adult use and medical marijuana sales. Therefore, if Oceanside adopted a 5% gross receipts tax, a proportionate revenue estimate is $687,500 to $1,712,500 annually to Oceanside.

The City may impose regulatory fees on medical marijuana businesses, but only to the extent that they offset actual costs to the City. Examples of regulatory fees that would apply to medical marijuana businesses include inspection and permitting fees for Conditional Use Permits, Local Licenses, Employee Permits and Fire Inspections. Staff estimates that it will take 180 days to develop a legally defensible regulatory fee structure for City Council consideration.

Staff recommends that regulatory fees be created for all medical marijuana businesses prior to accepting applications for any type of medical marijuana business. Furthermore, staff recommends that a taxing framework be developed for marijuana businesses and presented for voter approval in the November 2020 city elections. This will allow adequate time to assess actual impacts from marijuana legalization as well as the effectiveness of taxes in other jurisdictions in order to determine the appropriate taxing rate for Oceanside.
ENVIRONMENTAL DETERMINATION

The proposed ordinance, in and of itself would not occasion land development or any other material change to the environment. Projects subject to the amended zoning and municipal code provisions would be subject to separate CEQA review. Therefore, in accordance with the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b) (3), there is no possibility the proposed zoning text amendment would have a significant effect on the environment and is not subject to CEQA.

CITY ATTORNEY'S ANALYSIS

The City Attorney has drafted, and approved as to form, the Zoning Ordinance and City Code amendments consistent with the staff recommendation.

RECOMMENDATION

Staff recommends that the City Council review the 1) Medical Marijuana Ad Hoc Committee recommendations, 2) City Advisory Group comments, and 3) Staff recommendations; and introduce an ordinance amending the Oceanside Comprehensive Zoning Ordinance (aka 1992 OZO) and Chapter 7 Article XIII of the Oceanside City Code. The purpose of the amendment is to update regulations concerning commercial cannabis uses and allow the establishment and operation of specified commercial medicinal cannabis facilities only in designated zoning districts located east of the coastal zone boundaries, subject to conditions and limitations. The amended text will introduce new land use classifications (Article 4), will update commercial (Article 11), industrial (Article 13) and agricultural (Article 14) zoning district regulations and will modify regulated use provisions (Article 36). City Code Chapter 7 Article XIII, as proposed to be amended, will set forth the criteria and procedures for permits and licenses necessary to establish and operate commercial medicinal cannabis facilities within the City of Oceanside.

PREPARED BY:

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City Manager

REVIEWED BY:

Frank McCoy, Police Chief
Rick Robinson, Fire Chief
Jonathan Borrego, Development Services Director
John Mullen, City Attorney
Jane McPherson, Financial Services Director

TO: Honorable Mayor and City Councilmembers

FROM: Medical Marijuana Ad-hoc Committee

SUBJECT: REPORT OF FINDINGS FROM THE MEDICAL MARIJUANA AD-HOC COMMITTEE AND RECOMMENDATIONS FOR NEXT STEPS

SYNOPSIS

The Medical Marijuana Ad-hoc Committee (the Committee) recommends the City Council receive its report and recommendations concerning enacting cannabis businesses within the city, and forward the recommendations of the Medical Marijuana Ad-hoc Committee to appropriate staff and advisory boards/commissions for review, and comments to be brought back to Council for adoption at a later date.

BACKGROUND

Medicinal cannabis use and possession has been legal in the State of California since 1996 with the voter approval of Proposition 215. In November of 2016, the voters approved Proposition 64 which allowed for adult use of cannabis, more commonly referred to as "recreational" use.

With the State beginning to issue licenses to cannabis-related businesses in January 2018, cities were given the option of enacting local ordinances to prohibit and regulate commercial medicinal cannabis businesses. The Oceanside City Council adopted two ordinances prohibiting cannabis businesses; the first for medicinal cannabis businesses and the second for adult-use (or recreational) cannabis businesses. The council did allow for deliveries of medicinal cannabis from dispensaries licensed by outside jurisdictions.

Because the voters of Oceanside approved Proposition 64 by a vote of 57%, the City Council convened an ad-hoc committee to explore the possible enacting of regulations allowing for medicinal cannabis businesses within the city. The City Council approved the ad-hoc committee at its April 19, 2017 meeting and the ad-hoc committee first met on April 24 to begin its work.

Over the course of its six month charter, the ad-hoc committee held eight public meetings and numerous organizational meetings, took tours of existing medicinal cannabis production facilities, and met with industry experts to understand the needs of the businesses involved in cannabis production and sales. The Committee also began
to look at how the different aspects of the cannabis industry might fit in the City of Oceanside and be beneficial to its residents.

**ANALYSIS**

The Medical Marijuana Ad-hoc Committee has held a number of meetings, both public and organizational, over the course of its six-month charter. The public meetings were designed to solicit input from both experts in the industry and the public on a number of specific areas of the cannabis industry. They are:

- Cultivation
- Testing
- Distribution/Manufacturing
- Retail Sales
- Public Safety

Additionally, the Committee held an exploratory public meeting on the progress and possibility of the State developing a banking/finance system which would provide an answer to the lack of banking opportunities for the cannabis industry.

After each of these meetings, the Committee met to evaluate the information gathered from expert testimony, along with public input, and drafted recommendations which were passed to the City Attorney’s office to be formed into draft regulations. The Committee also met and solicited very preliminary input from the various city departments which would be affected by any new regulations. The input from the staff was incorporated into the draft regulations and will be finalized once staff is given the opportunity to fully analyze the draft regulations.

The Committee also kept track of the constantly changing State regulations which changed the face of the medicinal cannabis industry. Notably, SB94, a budget trailer bill passed and signed by the Governor in June, changed many of the already established regulations published by the various regulatory agencies. Also, more recently, at the end of the legislative year, AB133 was passed which further modified the landscape of the cannabis industry.

While most of the changes brought forward in both SB94 and AB133 were administrative and at the state level, there were changes which altered the face of the cannabis industry on a local level. Namely, SB94 changed the definition of vertical integration opportunities to businesses.

**Vertical Integration**

The State has allowed for full vertical integration of businesses within the cannabis industry with the sole exception of testing laboratories.
Businesses can have multiple licenses within the same facility without the need for distinct separations. For example, a licensee can hold a Cultivator (Type 1-3) license and a distributor (Type 11) license. Because of the change to State regulations, the Committee recommends removing the use separation requirements in Article 36 of the City's Zoning Ordinance for vertically integrated operations.

The State currently allows for full vertical integration with the previously noted exception of testing laboratories. The Committee has taken a strong position against allowing retail operations to be included in vertical integration and recommends retail operations be sole licensees. Also, the Committee recommends a prohibition on Type 12 – Microbusiness licenses which will allow a retail component along with all the other types of operations.

**Cannabis Licenses and Uses**

When all State regulations are fully implemented, there will be 36 different licenses for which a cannabis business can apply – 18 for medicinal cannabis and 18 for adult-use cannabis. The Committee has determined not all 18 licenses types should be available to local cannabis businesses.

With the passing and signing of SB94, the regulations for the two types of cannabis businesses were combined and streamlined. The determining factor, which distinguishes an adult-use cannabis business from a medicinal cannabis business is the letter designation in their license: an "A" for adult-use or an "M" for medicinal.

The Committee discussed the two license categories and met with a number of people in the industry. The supply side of the business (i.e. nurseries, cultivation, manufacturing, and distribution) is blind to the end use of the product, up to the point of packaging. For example, a cultivator who grows plants with both an "M" and an "A" license grows, essentially, the same plant.

Since the process, up to the packaging of the final product is "blind" to its final use, the Committee is recommending Cultivator, Distributor, Manufacturer, and Nursery licenses be both "M"-type for medicinal cannabis and "A"-type for adult-use cannabis. This will broaden the markets for these types of businesses which, otherwise, might be challenged with just an "M"-type license. The Committee believes there will be good paying, high-quality jobs which will come to Oceanside with the permitting of both categories of licenses.

Additionally, the Committee, in its deliberations, evaluated the types of uses. Based upon expert testimony, input from staff, and much deliberation, the Committee has decided there should be both regulated and non-regulated uses concerning the medicinal cannabis industry and the businesses located in Oceanside.

The Committee is recommending the creation of both regulated and non-regulated uses for cannabis businesses in Oceanside. The difference between the uses is the amount
of physical cannabis material present in the business, along with the total amount of cannabinoids present in the materials. Non-regulated uses will be found to have minimal amounts of both product and cannabinoids present.

The following is a break down of the licenses, their categories and uses the Committee is recommending.

**Regulated Uses**

**Cultivation – Categories M and A**

The Committee heard from a number of farmers in the South Morro Hills neighborhood of Oceanside throughout its entire six-month charter. The cultivation meeting was attended by a large crowd and the Committee heard from both farmers and a representative of the San Diego County Farm Bureau concerning the need for alternative crops to ensure survival of a number of farms in the South Morro Hills area.

The Committee recommends the City of Oceanside allow for cultivation of cannabis, subject to the approval of a Conditional Use Permit (CUP). The cultivation of cannabis would be restricted to the Agricultural Zone (A). The Committee also recommends the City limit the types of cultivator licenses. The state will allow for 11 different types of cultivator license. The Committee recommends the following license types be permitted in Oceanside:

- **Type 1A** – “Specialty indoor”
- **Type 1B** – “Specialty mixed light”
- **Type 2A** – “Small indoor”
- **Type 2B** – “Small mixed light”
- **Type 3A** – “Indoor”
- **Type 3B** – “Mixed light”

Each license has an alphanumeric designation. The number indicates the allowable square footage of cultivation, while the letter indicates the type of lighting used for cultivation.

Type 1 licenses would allow between 0 to 5,000 square feet of canopy size, varying with the letter designation. Type 2 would allow between 5,001 and 10,000 square feet of canopy size. Type 3 would allow between 10,001 and 22,000 square feet of canopy size. Licenses with the “A” designation would allow for indoor growth with only artificial lighting. The “B” designation would allow for a mixture of natural light and artificial light, most common in the industry. The City is allowed to set maximum threshold levels for artificial lighting and to prevent possible light pollution.

In 2023, the State will begin issuing Type 5 licenses, which will allow for cultivation without a cap on total amount of square footage. The City will need to revisit these
regulations at an appropriate time in the future to evaluate the need or desire to allow for local licensing and permits for Type 5 licenses.

There are a number of public safety conditions which the cultivators would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

**Distribution – Categories M and A**

The Distributor license is a pivotal license in the new cannabis business regulations. The Distributor is responsible for the procurement of the product from the Cultivators before it is converted to product and transported to Retailers. The Distributor is responsible for storing the cannabis products.

The Distributor will contact an independent licensed Testing Laboratory to take samples and test harvested cannabis. Tested cannabis is then sent to a Manufacturer for processing and returned to the Distributor, to send to a Retailer. Also, the State of California has designated the Distributor responsible for applying and maintaining a Board of Equalization permit and collecting taxes – both cultivation tax and excise tax – and forwarding on to the State.

Under the proposed regulations, the Distributor would be responsible for the proper dissemination of the cannabis – adult-use cannabis and products to only “A”-type manufacturers and retailers and medicinal cannabis and products to only “M”-type manufacturers and retailers.

The Committee recommends the City of Oceanside allow for Distributor licenses to be issued within the City. The distribution businesses would be restricted to the Light and General Industrial zones (IL/IG), subject to the approval of a CUP.

Existing distributors who have testified to the Committee indicate the footprints for their facilities are on the small- to medium-range. The Distributor will need to have adequate, secure storage area for all products while they wait for testing and for final disposition. The impact to our existing industrial square footage should be minimal.

There are a number of public safety conditions which the Distributors would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

**Manufacturing – Categories M and A**

The majority of users of medicinal cannabis do not smoke cannabis; instead, they use a variety of topical ointments or other consumables (edibles) to receive their treatment. The Manufacturer licensee would process the cultivated marijuana and create the various types of cannabis products which would be sold in addition to flower in retail settings.
The Committee recommends allowing Manufacturer licenses within the City of Oceanside which correspond with the State’s Type 6 license. Manufacturing businesses would be limited to the Light and General Industrial (IL/IG) zones, subject to the approval of a CUP.

This license type allows for only non-volatile substances to be used to extract the cannabinoids - tetrahydrocannabinol (THC – the psychoactive agent in marijuana) and cannabidiol (CBD – the medicinal agent in marijuana) - from the cannabis. Those processes which use volatile substances would be prohibited. Volatile substances are defined under California Health and Safety Code as “a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.”

Also, the manufacturers would be required to meet State Department of Health standards for their facilities - not unlike any other manufacturer of food or topical products - and would be inspected similarly by the Health Department. And, manufacturers who hold this license would only be allowed to sell their products to licensed cannabis retailers with similar category – either “M” or “A”. There is a prohibition against manufacturers cross selling products between medicinal and adult-use facilities.

There are a number of public safety conditions which the Manufacturers would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

Retail Operations (i.e. Dispensaries) – Category M only

The Committee took its duties to examine the presence of dispensaries in Oceanside very seriously. As the “face” of the cannabis industry, regulations governing dispensaries need to be sufficiently strict to allow for a high-quality business with the lowest impact possible to the residents of the city.

The Committee recommends the City of Oceanside allow only medicinal cannabis dispensaries (M-Type10) to operate under the following guidelines.

1. There will be one dispensary per 40,000 (1 per 40,000) residents of the city permitted. This would currently allow for a total of four dispensaries in the City;
2. Operating hours would be from 7am to 9pm;
3. The facility will meet all State and Local requirements for security;
4. Dispensaries will operate as sole licensees, no vertical integration will be allowed;
5. All concerned parties (both owners and staff) will be subject to a background check annually at the time of license renewal.

The zones in which medicinal cannabis dispensaries will be permitted are the Light and General Industrial (IL/IG) zones, as well as the Commercial Center and Special:
Highway-Oriented Commercial zones (CC/CS-HO), subject to the approval of a CUP. This is a consideration of patient access. While industrial zones are sufficient during the day hours, the high visibility and high traffic of the commercial zones add to patient security during evening and night hours.

Dispensary operators who testified to the Committee demonstrated proof of their dispensaries being high-quality businesses with a pharmacy or medical office feel and appearance. The old image of “pot shops” with flashing neon signage in the windows will not be allowed in Oceanside.

There are additional public safety conditions which the Retailers would need to fulfill, which all licensees would need to meet, and those will be addressed in the Public Safety portion of the analysis.

Non-Profits – Category M only

The State of California has acknowledged potential problems with patient access to medicinal cannabis due to income levels and the higher cost of products. The State allows non-profit organizations to provide different types of medicinal cannabis products to low-income people. Non-profits are able to provide medicinal cannabis products, from whole-plants to cannabis products, such as topicals and edibles, to those who need the product who cannot afford it through a retailer.

With the passing of Prop 64 and the legalization of adult-use cannabis, the State has opted to wait to analyze non-profit licenses. They have, instead, allowed for local licensing jurisdictions to issue annual licenses for non-profits to operate until they make a decision about licensing in 2020.

The Non-profit license would allow for an organization, which meets all the requirements laid out in State law and which the local jurisdiction has put into place, to provide low income people “whole-plant cannabis, cannabis products, and a diversity of cannabis strains and seed stock.”

The Committee recommends the City of Oceanside allow non-profit organizations, which can meet all state and local requirements, to apply annually for a local, non-profit license to provide low income residents access to medicinal cannabis. The licenses will be valid until such time the State makes its determination on whether it will issue the license or not.

There are a number of public safety conditions which the Non-profits would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

Non-regulated Uses
Testing Labs

Currently, there are no regulations concerning the qualifications a medicinal cannabis testing facility is required to obtain and maintain. Neither are there regulations concerning the types of testing to be performed on medicinal cannabis products. As of January 2018, the State of California is implementing very strict regulations regarding both of these areas.

Beginning in January 2018, Testing Labs will be required to obtain and maintain ISO/IEC 17025 accreditation. There are two labs in the general area which maintain this level of accreditation currently.

The testing performed on harvested medicinal cannabis, as well as manufactured products, will follow new, expanded guidelines and will be mandatory. Currently, only the tests which are asked for are performed on the products; this mostly consists of testing for potency levels of tetrahydrocannabinol (THC — the psychoactive agent in marijuana) and cannabidiol (CBD — the non-psychoactive agent in marijuana).

The Committee recommends the City of Oceanside allow testing labs to operate. The lab facilities would be permitted in the Limited and General Industrial (IL & IG) zones, as well as the Community Commercial, General Commercial and Special Highway Oriented Commercial (CC/CG/CS-HO) zones, subject to the approval of an Administrative Use Permit (ACUP). The Committee also recommends the City adopt language which requires licensed Distributors within the City to use only City licensed testing labs.

There are a number of public safety conditions which the labs would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

Nurseries — Categories M and A

Nurseries are a source of plant stock and seeds for cultivators. The Nursery license restricts the licensee to only propagating the plant and seed stock and strictly prohibits cultivation of any type. Cloned or seedling plants in the nursery setting each contain less than one percent of any measurable cannabinoids and would not be at a stage near flower production. The plants which would be harvested for seeds would be grown to full flower stage, but would not be harvested because the seeds are produced after the flowering stage. Hence, no cultivating activities would be allowed.

The Committee recommends the City of Oceanside allow Nursery business to operate. Nurseries would be permitted in the Agricultural (A) zones. Because some nurseries also operate clean environments to process tissue propagation and other processes which affect the strains of cannabis, the Committee also recommends nurseries less than 1,000 square feet should be allowed in the Community Commercial, General
Commercial and Special Highway-Oriented Commercial (CC/CG/ CS-HO) zones, subject to the approval of an ACUP.

There are a number of public safety conditions which the labs would need to fulfill which all licensees would need to meet and those will be addressed in the Public Safety portion of the analysis.

Public Safety

Along with guaranteeing patient access, public safety was a top concern of the Committee and of those who gave the Committee input during our public meetings. The State has issued strict guidelines for the safety and security of all cannabis businesses and the Committee has chosen to adopt all of the State’s guidelines.

The guidelines which the Committee is recommending are common sense guidelines. Keeping in mind, these are businesses whose owners are naturally protective of the product which they will store and which will already have a high-level of security in place. The extra required security which the State and the Committee are recommending will hopefully put residents at ease.

Security Plan

The Committee is recommending the following security measures be required of all cannabis businesses in the City and submitted in a security plan at time of application for local licensing:

Video surveillance
Covering every square inch of the facility, 24/7 and stored for 120 concurrent hours. Also, access to streaming feed must be provided to Oceanside Police Department.

Alarm system
Interior and exterior sounding alarms on all entry points as part of an alarm system which is operated and monitored by a security company licensed with the appropriate State agencies.

Signage
All existing exterior sign rules will be in place in accordance with existing sign codes, along with interior signage indicated both prohibited areas and the fact video surveillance is in use.

Lighting
All entrances will be illuminated during evening hours. Compliance with city lighting standards must be met and maintained.
Commercial grade locks
All entrances will be equipped with commercial, non-residential, grade locks.

On-site security
All businesses will provide for on-site security staff 24/7 unless otherwise approved by the Chief of Police.

Background Checks
All concerned parties in a cannabis business are required to submit to an annual background check at the time of license renewal. The background checks are subject to local scrutiny; the State will issue renewals of licenses based on the input of the local jurisdiction.

Track and Trace
The State of California has instituted the Track and Trace system and has made it mandatory for most cannabis businesses. The Track and Trace system will accurately trace the chain of custody for every gram of marijuana cultivated, manufactured, distributed, sold, and disposed of in the State.

Each plant is issued a unique identifying number at time of planting for cultivation. This number then follows the plant and product throughout its lifetime. Weights of harvested cannabis are taken – for both viable product and waste product – and entered into the system so that the total amount of cannabis Is tracked.

At each step, the licensee is responsible for updating the Track and Trace system, at both time of receipt of product and at time of any disposition there after. This creates a complete chain of custody from planting to purchase or disposal for every gram of marijuana in the system.

The State has identified its software program and it is incumbent upon the licensees to purchase software which will fully integrate with the State’s software. Once connected, the State will monitor all aspects of the business and will be alerted if discrepancies or anomalies appear in the information provided. This is turn will trigger an automatic audit of the business concerned.

The Track and Trace system is designed to provide a record of the chain of custody for each product anywhere along throughout the process. A bar code read at a retailer will be able to provide the Cultivator, Distributor, Manufacturer and Testing Lab which handled the cannabis.

Nursery licensees will not be required to be a part of the Track and Trace system. At time of sale to cultivators, the THC level in a seedling is less than one percent and the State does not consider this a viable product in need of tracking. Also, “mother” plants
which are used to produce clones are kept in vegetative states and will not produce flowers and seed producing plants will not be suitable for harvesting.

**State Licensing**

The State of California will rely upon the local jurisdictions to issue licenses. While the business can apply to the State at any time, the eligibility of the licensee to operate in the jurisdiction will be the determining factor in the State issuing a license.

All local regulations and requirements must be met before the State of California will issue a cannabis business license.

**The Efficacy of the City’s Ban on Cannabis**

As was mentioned before, the City of Oceanside currently has enacted bans on the commercial cultivation, production, and sales of both medicinal and adult-use cannabis. If the recommendations of the Ad-hoc Committee are not enacted, the bans the City currently has in place will remain.

The intent of the bans was to maintain local control over an industry which, if left to the State of California to regulate, would potentially create an environment around which the residents of the City of Oceanside would not want to live. While the bans were enacted with good intentions, further review of the realities in which we will operate beginning January 2018, calls to question the efficacy of the bans.

With the voter approval of Proposition 64, adult-use cannabis is legal in the State of California. This means, currently, citizens are allowed to grow up to six mature plants on their property and consume the product which they grow. They are allowed, at any one time, to be in possession of up to one ounce of cannabis (or eight grams of concentrate [e.g. wax, crumble, shatter, etc.]). In addition, an individual is allowed to “gift” a plant or product (up to an ounce) to another individual — “gift” meaning no exchange of money.

The current bans which the City of Oceanside has in place do nothing, and are unable to do anything, about this new reality. With the passage of Proposition 64, the bans which the City has in place are essentially rendered useless. The local control over the proliferation of adult-use cannabis, which the bans were meant to address, will be lost due to the legal status under state law. As personal, adult-use plants are grown and harvested, the product will continue to be available, not from a shady, back-room, illegal dispensary, but from your friend who has spent the money to install a grow room in their spare bedroom.

While the adult-use cannabis user is not adversely affected, the medicinal cannabis patient is, and it is for those people The Committee’s recommendations are made. Medicinal cannabis patients need a reliable, safe, and regulated source for the medicine they use. Personal production is incapable of producing sufficient quantities of the product. Without this available source, the patient is forced to continue to use
unregulated, untested, and unsafe product delivered to them by unregulated and potentially unsafe delivery drivers.

The Committee's recommendations will allow the City to continue to exercise reasonable local control over the cannabis industry by putting in place regulations which will govern the industry, foster an environment where legal activities will be desired and sought, and provide the needed product to the patients who use and need it.

FISCAL IMPACT

The potential revenue of these recommendations is not known at this time.

CITY ATTORNEY'S ANALYSIS

The City Attorney has prepared preliminary amendments to the Zoning Ordinance and the City Code at the direction of the Committee. Those amendments would be subject to additional review by staff and the Planning Commission should the City Council accept the Committee's recommendations. The City Attorney is prepared to make additional changes as directed by the City Council. As noted in the Committee's report, commercial cannabis businesses remain illegal in Oceanside and staff will not be issuing any permits for such uses unless appropriate amendments to the Zoning Code and City Code are made effective.

RECOMMENDATION

The Medical Marijuana Ad-hoc Committee (the Committee) recommends the City Council receive its report and recommendations concerning enacting cannabis businesses within the city, and forward the recommendations of the Medical Marijuana Ad-hoc Committee to appropriate staff and advisory boards/commissions for review, and comments to be brought back to Council for adoption at a later date.

PREPARED BY:

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