

## **H-12**

June 23, 2020

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

Receive the supporting documentation into the record, conclude the public hearing, and find the project statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 20180.9 and CEQA Section 15265(a)(1);

Declare an Ordinance amending various sections of Title 21, Zoning Regulations, of the Long Beach Municipal Code, relating to assembly uses, urban agriculture, wireless telecommunication facilities, and adult-use cannabis, incorporating the suggested modifications by the California Coastal Commission, read the first time and laid over to the next regular meeting of the City Council for final reading; and,

Adopt a Resolution directing the Director of Development Services to submit the Ordinance amendments to the California Coastal Commission for certification with the California Coastal Commission's February 12, 2020 action. (Citywide)

### DISCUSSION

The City Council amended various sections of the Zoning Code related to assembly uses (ORD 18-0030 adopted on December 11, 2018), urban agriculture (ORD-17-0024 adopted on October 10, 2017), Wireless Telecommunication Facilities (ORD-18-0012 adopted on May 1, 2018), and adult-use cannabis (ORD-18-015 adopted on July 10, 2018) and directed staff to submit the aforementioned Ordinances to the California Coastal Commission for certification. In accordance with the 1976 California Coastal Act, the City of Long Beach (City) has a certified Local Coastal Program (LCP), which consists of the Land Use Plan and Implementation Plan. The Implementation Plan includes the Zoning Code, the Zoning map, and Subdivision code. Therefore, modifications to the Zoning Ordinance, a part of Implementation Plan, must be certified by the California Coastal Commission.

The Ordinances were submitted as a LCP amendment to the California Coastal Commission on December 28, 2018 for certification. On February 12, 2020, the California Coastal Commission considered the LCP amendment and took action to approve 14 modifications (Attachment A).

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The proposed modifications made by the California Coastal Commission are intended to provide consistency with the LCP and California Coastal Act and consist of the following types of changes:

- Expanding the categories of development projects that require a Local Coastal Development and procedures for exclusion of development from Coastal Development Permits.
- Expanding findings for approval of a Local Coastal Development Program for coastal resource protections.
- Clarifying permitting requirements in the Coastal Zone.
- Correcting of typographical errors and updating references.
- Clarifying that wireless telecommunication facilities in the Coastal Zone may require a Coastal Development Permit.
- Retaining regulations of wireless telecommunication facilities in the public right-of-way within Title 21.
- Eliminating references to Long Beach Municipal Code sections that are not part of the certified LCP and clarifying that other references to Title 5 - Regulations of Businesses, Trades and Professions are not included for certification.

For the LCP amendment to be certified by the California Coastal Commission, the City Council must now take action to accept the modifications (Attachment B). If approved, the Ordinance will be forwarded to the California Coastal Commission for final approval.

Public hearing notices were published in the Long Beach Press-Telegram on June 8, 2020, no responses were received as of the date of preparation of this report.

In accordance with the Guidelines for Implementation of the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9 and CEQA Section 156265(a)(1) the proposed modifications are statutorily exempt. CEQA does not apply to activities and approvals by the City necessary for the preparation and adoption of an LCP amendment. The proposed modifications are necessary for certification of the LCP amendment by the California Coastal Commission.

This matter was reviewed by Assistant City Attorney Michael J. Mais on June 1, 2020 and by Budget Management Officer Rhutu Amin Gharib on June 5, 2020.

TIMING CONSIDERATIONS

City Council action is requested on June 23, 2020, to comply with the California Coastal Act requirement that the City complete the adoption of the suggested modifications within six months of the California Coastal Commission's February 20, 2020 action.

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FISCAL IMPACT

There is no fiscal impact associated with this recommendation. This recommendation has no staffing impact beyond the budgeted scope of duties and is consistent with existing City Council priorities.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



LINDA F. TATUM, FAICP  
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:



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THOMAS B. MODICA  
CITY MANAGER

ATTACHMENTS: ORDINANCE  
RESOLUTION  
ATTACHMENT A – CALIFORNIA COASTAL COMMISSION STAFF REPORT  
ATTACHMENT B – UNDERLINE STRIKE-OUT VERSION OF ORDINANCE

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
301 E Ocean Blvd, Suite 300  
Long Beach, CA 90802  
(562) 590-5071

**Attachment A****W19a**

January 31, 2020

**TO:** Commissioners and Interested Persons

**FROM:** Steve Hudson, Deputy Director, South Coast District  
Zach Rehm, District Supervisor  
Dani Ziff, Coastal Program Analyst

**SUBJECT:** Amendment Request No. 3-18C (LCP-5-LOB-18-0100-3-Part C) to the City of Long Beach Certified Local Coastal Program, for Public Hearing and Commission Action at the February 12-14, 2020 meeting in Long Beach.

**SUMMARY OF LCP AMENDMENT REQUEST NO. 3-18C**

The Coastal Commission certified the City of Long Beach Local Coastal Program (LCP) on July 22, 1980. Amendment Request No. 3-18C would amend the Implementing Ordinances of the certified LCP to revise regulations relating to assembly uses, urban agriculture, wireless telecommunications facilities, and adult-use cannabis. The LCP amendment request affects only the Implementation Plan (IP) portion of the certified LCP (Zoning Regulations – Title 21 of the Long Beach Municipal Code). The proposed changes to the City’s zoning code are contained in City Council Ordinance Nos. ORD-18-0030, ORD-17-0024, ORD-18-0012, and ORD-18-0015. The LCP amendment request was submitted for Commission certification by City Council Resolution Nos. RES-18-0030, RES-17-0108, RES-18-0050, and RES-18-0082. The City of Long Beach Planning Commission held public hearings for the ordinances and the City Council held public hearings for the resolutions as described in more detail in Section I.B of the subject staff report. The City submitted LCP Amendment Request No. 3-18 on December 28, 2017 and Commission staff deemed the LCP amendment request complete on January 11, 2019.

Parts A and B of LCP Amendment 3-18, for changes to the certified implementing ordinances relating to conditional use permits, unattended donation bins, and massage establishments, were approved by the Commission as submitted by the City on June 12, 2019 and August 9, 2019, respectively. The staff report for Part C was published in preparation for the Commission’s December 2019 meeting; however, the item was postponed at the City’s request to allow for additional time for the City to coordinate with Commission staff and the United States Department of Justice (USDOJ) on the suggested modifications to the religious use regulations described below. After such coordination, the suggested modifications have been modified to address the City’s concerns specific to religious assembly uses, and include new policies requiring protection of coastal resources that will apply to all uses and projects in the coastal zone, including religious assembly uses.

The City proposes to update regulations and development standards for religious assembly land uses to be at least as flexible as other uses, classify different size assembly uses and associated permitting requirements, and clarify land use categorizations. These changes are proposed in response to a USDOJ inquiry and investigation into the City’s religious assembly use zoning

regulations, where the USDOJ found that some land uses with similar structures like fitness centers and theaters did not require the same permit review process. Thus, the City's existing religious assembly use regulations could be in violation of the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

Another part of the subject LCP amendment request relates to urban agriculture. Currently, the City does not have a definition of urban agriculture and, thus, it is not recognized as a permitted use. The City proposes to add regulations relating to urban agriculture to allow the use by-right in multi-family, commercial, and light industrial zones and allow the use within single-family, two-family, and heavy industrial zones subject to the City's review and approval of an Administrative Use Permit. This allows the City to provide tax incentives to landowners of vacant properties who use their property for small-scale agricultural purposes, pursuant to the Urban Agriculture Incentive Zones Act (AB 551, approved September 2013).

Additionally, a segment of this LCP amendment request relates to wireless telecommunications facilities. Currently, regulations relating to wireless telecommunications facilities are housed within Title 21 of the City's Municipal Code and the certified IP. As proposed, regulations for wireless telecommunications facilities in the public right-of-way (PROW) will be removed from Title 21 and a revised version will be included in Title 15 of the City's Municipal Code, which is not part of the City's certified LCP. The proposed regulation changes add new standards for the location, size, intensity, and aesthetics of small cell wireless telecommunications facilities. The policies relevant to Coastal Act issues (sensitive habitat and visual resources) will be retained in the LCP, pursuant to the suggested modifications.

The final portion of the subject LCP amendment request relates to adult-use cannabis. As of May 2018, approximately 30 medical marijuana collectives and businesses, including dispensaries, had been established in the City of Long Beach. Thus, the City is proposing to regulate adult-use cannabis by adding definitions and designating whether the use is permitted, conditionally permitted, or prohibited within specific zones in Title 21 of the City's Municipal Code. In addition, the City proposes to add Chapter 5.92 to the City's Municipal Code (not part of the City's IP).

In summary, the LCP amendment, as proposed by the City, would clarify and make more specific, in some cases, its regulations relating to community assembly uses and wireless telecommunications facilities and add new regulations relating to urban agriculture and adult-use cannabis.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission certify LCP Amendment Request No. 3-18C with suggested modifications necessary to clarify permitting requirements in the coastal zone and protect coastal resources including water quality, sensitive habitat, biological resources, recreational opportunities, public coastal views, and bluff stability. The motions and resolutions to carry out the staff recommendation are on **page five**. The suggested modifications to the LCP amendment request are included under Section III of this staff report.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the IP amendment request as submitted; and,**
- 2. Certify, only if modified, the IP amendment request.**

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**EXHIBITS**

- Exhibit 1 – Assembly Uses Resolution and Ordinance
- Exhibit 2 – Urban Agriculture Resolution and Ordinance\*
- Exhibit 3 – Wireless Telecommunications Facilities Resolution and Ordinance\*
- Exhibit 4 – Adult-Use Cannabis Resolution and Ordinance\*
- Exhibit 5 – Administrative Draft Identifying City-Proposed Changes to the Certified Implementing Ordinances

*\*These exhibits do not include the entire ordinance, only the portion of the ordinance that relates to the Implementing Ordinances of the LCP. The full ordinance text can be reviewed on the City’s website and at the Coastal Commission’s South Coast District Office.*

## I. PROCEDURAL HISTORY

### A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementation Plan (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP).

### B. LOCAL REVIEW AND DEADLINE FOR COMMISSION ACTION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states: *During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.*

The City of Long Beach Planning Commission and the City Council held public hearings on Part C of the proposed amendment summarized below:

The proposed changes to the City's zoning code are contained in City Council Ordinance Nos. ORD-18-0030, ORD-17-0024, ORD-18-0012, and ORD-18-0015. The LCP amendment request was submitted for Commission certification by City Council Resolution Nos. RES-18-0030, RES-17-0108, RES-18-0050, and RES-18-0082. The City of Long Beach Planning Commission held public hearings for the assembly use ordinance (**Exhibit 1**) on September 20, 2018 (no public comment provided), urban agriculture ordinance (**Exhibit 2**) on May 4, 2017 (public comment provided in support and neutral), wireless telecommunications facilities ordinance (**Exhibit 3**) on February 15, 2018 (public comment provided in opposition), and adult-use cannabis ordinance (**Exhibit 4**) on May 17, 2018 (public comment provided in support and opposition). On these dates, the Planning Commission approved recommendations to amend the zoning code and to accept the CEQA review—either a Categorical Exemption (urban agriculture) or Negative Declaration (assembly uses, wireless telecommunications facilities, adult-use cannabis)—for the zoning code amendments. The City Council held public hearings for the resolutions (**Exhibits 1-4**) on December 4 (no public comment provided) and 11 (no public comment provided), 2018 for assembly uses; October 3 (public comment provided in support) and 10 (no public comment provided), 2017 for urban agriculture; March 13 (continued), April 17 (public comment provided in support and opposition), and May 1 (no public comment provided), 2018 for wireless telecommunications facilities; and June 19 (public comment provided in support and in opposition) and July 10, 2018 (no public comment).

On December 28, 2018, the City of Long Beach submitted a request to the Commission to amend its certified Local Coastal Program (LCP). Only the Implementation Plan (IP) portion of the City's certified LCP is affected by the proposed amendment. On January 11, 2019, the Executive Director determined that LCP Amendment Request No. 3-18 was in proper order and legally adequate to comply with the submittal requirements of the Coastal Act and the California Code of Regulations and was deemed complete pursuant to the requirements of Section 30510 of the Coastal Act. On March 3, 2019, the Commission extended for one year the deadline for Commission action on this LCP amendment. The deadline for Commission action on the proposed amendment request is April 10, 2020. The Commission heard, and approved as submitted by the City, Parts A and B of the subject LCP amendment, for changes to the certified

implementing ordinances relating to conditional use permits, unattended donation bins, and massage establishments, on June 12, 2019 and August 9, 2019, respectively.

#### **FOR ADDITIONAL INFORMATION**

The file is available for review at the South Coast District office located at 301 East Ocean Boulevard, Suite 300, Long Beach, CA 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Dani Ziff or Zach Rehm in the South Coast District office at (562) 590-5071.

## **II. MOTIONS AND RESOLUTIONS**

**Motion I:** *I move that the Commission **reject** Implementation Plan Amendment No. 3-18C to the City of Long Beach certified LCP as submitted.*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **Resolution to Deny as Submitted:**

*The Commission hereby denies certification of the Amendment to the Implementation Plan submitted for the City of Long Beach certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.*

**Motion II:** *I move that the Commission **certify** Implementation Plan Amendment No. 3-18C to the City of Long Beach certified LCP if modified in conformance with the suggested changes set forth in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Amendment to the Implementation Plan with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **Resolution to Certify if Modified:**

*The Commission hereby certifies the Amendment to the Implementation Plan for the City of Long Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications conforms with and is adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*



### III. SUGGESTED MODIFICATIONS

For the following suggested modifications:

Language of the currently certified IP is shown in plain text.  
The City's proposed additions are shown in underlined text.  
The City's proposed deletions are shown in ~~strike-out text~~.  
The Commission's suggested additions are shown in **bold, underlined text**.  
The Commission's suggested deletions are shown in **~~bold, underlined, strike-out text~~**.

The following suggested modifications are necessary to carry out the provisions of the certified LUP:

**Suggested Modification 1:** Revise the categories of projects that require local coastal development permits and the procedures for exclusion of development from CDP requirements to protect sensitive coastal resources.

21.25.903 – Permit Required.

All development in the coastal zone shall be required to obtain either a coastal permit pursuant to Section 21.25.904 or a coastal permit categorical exclusion pursuant to Section 21.25.906. Such approval must be issued prior to the start of development and shall be required in addition to any other permits or approvals required by the City.

- A. **Coastal Permit Issued by the Coastal Commission.** Developments on tidelands and submerged lands require a permit issued by the California Coastal Commission in accordance with the procedure as specified by the California Coastal Commission.
- B. **Coastal Permits Issued by the City.** The following categories of projects require coastal permits in accordance with the procedures set forth in this Division:
1. Development on the first lot located on, adjacent to, across the street from, or abutting the beach, bay, ocean or tidelands, except minor addition to a single-family residence as specified in Subsection 21.25.903.C (categorical exclusion).
  2. All development projects which require additional discretionary review (such as a conditional use permit, subdivision map or standards variance).
  3. Traffic improvements which do not qualify for categorical exclusion.
  4. Public works projects, excluding traffic improvement projects, with an estimated cost of fifty thousand dollars (\$50,000.00) or more.
  5. **Any extension of an existing facility into tidelands, environmentally sensitive areas, coastal waterways, public parkland, or within fifty (50) feet of a coastal bluff edge.**
- C. **Exemptions.** The following categories of projects are exempt from the coastal permit requirement. However, a coastal permit categorical exclusion (CPCE) shall be obtained pursuant to the procedures indicated in Section 21.25.906.
1. Minor additions on existing single-family residences for the first lot located on, adjacent to, across the street from, or abutting the beach, bay ocean or tidelands.

Such additions must be less than ten percent (10%) of the existing floor area and shall not create an additional story or loft.

2. All projects (excluding the above) which are consistent with the Zoning Regulations, **Local Coastal Program, applicable water quality standards, best management practices and pollution controls**, and which do not require any discretionary review (e.g., conditional use permit, subdivision map).
3. Traffic improvements which do not:
  - a. Alter roadway or intersection capacity by more than ten percent (10%) (except stop signs and stop lights); or
  - b. Decrease parking (except by establishing a red curb next to a corner); or
  - c. Impair access to the coast.
4. Public works projects (excluding traffic improvements) with an estimated cost of forty-nine thousand nine hundred ninety-nine dollars (\$49,999.00) or less.

**Suggested Modification 2:** Add coastal resource protections.

21.25.904.C – Findings Required.

**Findings Required.** Prior to approving a local coastal development permit, the responsible hearing body must find:

1. The proposed development conforms to the certified local coastal program including but not limited to all requirements for replacement of low- and moderate-income housing; and
2. The proposed development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act. This second finding applies only to development located seaward of the nearest public highway to the shoreline.
3. **For an application for a religious assembly use, if an exception or waiver of LCP requirements is sought under Section 21.52.219.8.G, that the exception or waiver allows the minimum deviation from LCP requirements necessary to comply with RLUIPA, and that the decision maker has imposed all conditions necessary to comply with all provisions of the LCP, with the exception of the provision(s) for which implementation would violate RLUIPA.**
4. **The proposed development is sited, designed and managed to minimize the transport of pollutants by runoff into coastal waters and groundwater, and to minimize increases in runoff volume and velocity from the site which may adversely impact coastal resources or coastal bluff stability. Best Management Practices shall be implemented, as applicable, including but not limited to applicable local, regional, state and federal water quality permits, standards and guidance provided in the LCP, best practices and other measures as may be recommended by the City Engineer.**

**Suggested Modification 3:** Clarify permitting requirements in the coastal zone.

Section 21.31.110 – Permitted uses.

Table 31-1 indicates all uses permitted (Y), not permitted (N), permitted by conditional use permit (C), permitted as an accessory use (A) and permitted as a temporary use (T) in the residential zones. Permitted uses with an asterisk (\*) are subject to special development standards contained in Chapter 21.45 of this Title. Accessory uses, conditional uses and temporary uses also have special development standards, as set forth in Chapters 21.51, 21.52 and 21.53, respectively. **All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX.**

**Suggested Modification 4:** Acknowledge that some of the Chapters referenced in Table 31-1 are not part of the certified LCP and clarify permitting requirements in the coastal zone.

Table 31-1 – Uses Residential Zones *(Text to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Suggested Modification 5:** Revise Table 32-1 to correct references to other LCP sections, acknowledge that some of the Chapters referenced in Table 32-1 are not part of the certified LCP, and clarify permitting requirements in the coastal zone.

Table 32-1. Uses in All Other Commercial Zoning Districts

Public and Semi-Public Institutional	CNP	CNA	CNR	CCA	CCP	CCR	CCN	CHW	CS	
Church or templeReligious assembly uses with 1) up to 2,501 sq. ft. of GFA, or 2) 100 or fewer occupants	N Y	AP Y	AP Y	AP Y	AP Y	AP Y	AP Y	AP Y	N	Also see Section 21.52.213See Section <b><u>21.45.125</u></b> <b><u>21.52.219.8</u></b> Religious Assembly Uses shall be permitted (Y) in the PD-30 Downtown Plan Area (excluding Neighborhood Overlay), subject to Section <b><u>21.45.125</u></b> <b><u>21.52.219.8.</u></b>
Religious assembly uses with 1) between 2,501 sq. ft. and 25,000 sq. ft. GFA, or 2) more than 100 occupants	AP	AP	AP	Y	AP	Y	Y	Y	N	
Religious assembly uses with over	N	N	N	C	N	C	C	C	N	

25,000 square feet of GFA [...]										
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*(The following text is to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Suggested Modification 6:** Acknowledge that some of the Chapters referenced in Table 32-1A are not part of the certified LCP and clarify permitting requirements in the coastal zone.

Table 32-1A – Uses in Commercial Zoning Districts *(Text to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Suggested Modification 7:** Clarify permitting requirements in the coastal zone and update language for consistency with the City’s Municipal Code terminology.

Section 21.33.060.C

Table 33-2 shall be used to determine applicable use regulations in the industrial districts. Table 33-2 establishes general classes of uses. For each category, the table indicates whether the class of use is permitted by right (Y); not permitted (N); permitted subject to an administrative use permit (AP) as defined in ~~Chapter~~**Section** 21.25, Division IV (Administrative Use Permits) of this Title; or permitted subject to conditional use permit review (C) pursuant to ~~Chapter~~**Section** 21.25, Division II (Conditional Use Permits) of this Title. **All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX.**

**Suggested Modification 8:** Acknowledge that some of the Chapters referenced in Table 33-2 are not part of the certified LCP and clarify permitting requirements in the coastal zone.

Table 33-2 – Uses in Industrial Districts *(Text to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Suggested Modification 9:** Fix a typographical error.

21.52.232 – Fitness or health club, dance or karate studio and the like.

- A. The use shall demonstrate adequate parking for peak demand.;
- B. The facility shall be limited to five thousand (5,000) sq.-ft.-square feet of gross usable floor area in neighborhood commercial zones (CNP, ~~CANCNA~~ and CNR).

**Suggested Modification 10:** Clarify the language in the urban agriculture use regulations.

21.52.260 – Interim Playgrounds, urban agriculture use, community gardens and recreational parks

The following shall apply to interim playgrounds, community gardens and recreational parks. Only A, B, and C only apply to urban agriculture uses:

- A. Improvements for an interim playground/community garden/recreational park shall be limited to landscaping, irrigation systems, accessory buildings and accessory structures.
- B. The following setbacks shall be the same apply to all accessory buildings and accessory structures:
  - 1. Front. The front setback shall be the same as a principal structure in the applicable zoning district.
  - 2. Side. A four-foot (4') side setback is required when abutting a residential district otherwise none is required.
  - 3. Rear. A ten-foot (10') rear setback is required when abutting a residential district otherwise none is required.
- C. The maximum height of any accessory building shall be thirteen feet (13').
- D. The interim playground/community garden/recreational park hours of operation shall be seven-thirty (7:30) a.m. to dusk.
- E. Off-street parking shall not be required for an interim playground/community garden/recreational park ~~use~~.
- F. Adequate trash receptacles shall be provided and maintained for the life of the use.

**Suggested Modification 11:** Clarify permitting requirements in the coastal zone.

Section 21.56.030.C

Locations in the public right-of-way. A Wireless Right-of-Way Facility Permit shall be required for the initial construction and installation of all new Wireless Telecommunications Facilities in accordance with all procedures set forth in Chapter 15.34. In the coastal zone, a Coastal Development Permit may be required for new Wireless Telecommunications Facilities development in accordance with all procedures set forth in Division IX of Chapter 21.25.

**Suggested Modification 12:** Clarify permitting requirements in the coastal zone.

Section 21.56.100.J

Generators and emergency power. Diesel generators are allowed as an emergency power source, although they are discouraged. When a feasible alternative technology for permanent on-site backup power becomes available (for example, fuel cells) the Department of Development Services may require the use of such technology in lieu of a diesel generator, unless the applicant provides written documentation explaining why such an alternative is not feasible. All generator installations shall comply with all containment requirements of the applicable Fire and Building Codes, without exception. Unless otherwise approved by the Director of Public Works or if within the Coastal Commission's retained permit jurisdiction area, by the Coastal Commission or its Executive Director, generators and emergency power source for wireless facilities located in the public right-of-way are prohibited.

**Suggested Modification 13:** Maintain LCP standards for wireless telecommunications facilities in the public right-of-way by incorporating a segment of the City's proposed regulations in Chapter 15.34 (improved from existing Section 21.56.130) into the certified IP Section 21.56.120 for requirements for telecommunications in the coastal zone.

Section 21.56.120 – Additional requirements and standards for Wireless Telecommunications Facilities and co-location facilities in the coastal zone.

- A. Location. New Wireless Telecommunications Facilities shall not be located between the first public highway and the sea or bay, unless no feasible alternative exists, and the facility is not visible from a public location, or will be attached to an existing structure in a manner that does not significantly alter (in the determination of the Staff Site Plan Review Committee) the exterior appearance of the existing structure.
- B. Operational Interference with Public Rights-of-Way. No part of a wireless telecommunication facility shall alter vehicular circulation or parking within the public right-of-way, nor shall it impede vehicular and/or pedestrian access or visibility along any public right-of-way. No permittee shall locate or maintain wireless telecommunication facilities to unreasonably interfere with the use of City property or the public right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic on City property or the public right-of-way, interference with public utilities, and any such other activities that will present a hazard to public health, safety or welfare when alternative methods of construction would result in less disruption. All such wireless telecommunications facilities shall be moved by the permittee, at the permittee's cost, temporarily or permanently, as determined by the Director of Public Works.
- C. Aesthetic Impacts. All wireless telecommunication facilities shall be designed and located to eliminate or substantially reduce their visual and aesthetic impacts upon the surrounding public rights-of-way and public vantage points. To accomplish this goal, all wireless telecommunication equipment shall be

developed with the intent of locating and designing such facilities in the following manner and order of preference (from top to bottom). In instances where a facility is proposed for installation at a location or in a manner that is not the highest preference for each of the following categories, the applicant shall make a factual showing that all higher preferences are infeasible:

**1. Antenna preferences:**

- a. On an existing public utility pole;
- b. On a replacement street light pole;
- c. On an existing structure other than a street light pole or utility pole in the public-right-of-way;
- d. On a new structure other than a street light pole or utility pole in the public right-of-way (e.g., wireless telecommunication kiosk);
- e. On an existing non-wood utility pole;
- f. On a new non-wood utility pole;
- g. On an existing wood utility pole.

**2. Equipment preferences (for all appurtenant equipment, including, but not limited to, radio units, power supplies, voltage converters, and electrical service connections and meters):**

- a. When bundled in an all-in-one equipment cabinet with the antenna(s), provided, however, that the size of the cabinet shall be minimized to the satisfaction of the Director of Public Works;
- b. Within a below-grade equipment vault, or on a street light pole or utility pole that does not place new cabinets or other above ground furniture in the public right-of-way, provided, however, that the size of the boxes on the pole shall be minimized to the satisfaction of the Director of Public Works and that the power supply equipment is undergrounded;
- c. Attached to existing power source in an existing utility box;
- d. Enclosed at the base of the pole on which the antenna(s) is/are proposed for installation;
- e. In an existing ground-mounted (grade-level) equipment cabinet, with no expansion or additional cabinets to be added;
- f. Within a new equipment enclosure mounted at grade.

**3. Site location preferences:**

- a. Within the public right-of-way, not in a center median, and not requiring the removal of existing parkway trees, reduction of the size of any parkway landscape planters, and not requiring any modifications to the existing location of any infrastructure within the public right-of-way;





3. Pole-mounted equipment shall be a minimum of ten feet (10') above level of sidewalk for public safety reasons.

E. Design:

1. Any pole to be installed in the public right-of-way shall be disguised to resemble a utility pole to the maximum extent possible. All antennas shall be limited to a diameter no more than the widest part of the main pole, excluding its base. All antennas and screening devices shall be painted or finished to match the pole. All pole or equipment shall be painted or otherwise coated, per City standard, to be visually compatible with existing poles and equipment. The installation of new wood poles is not preferred;
2. Omnidirectional antenna units and groups of panel antennas shall be placed on the same vertical axis as the center of the pole where feasible. If not feasible, the installation shall utilize brackets and/or cross-arms that allow no more than a six-inch (6") extension (stand-off) from the pole except when additional stand-off is required to comply with health and safety regulations such as GO-95 and OSHA;
3. Antenna installations on existing City infrastructure shall be placed in a manner so that the size, appearance and function of the final installation is essentially identical to the installation prior to the antenna installation taking place;
4. No faux or otherwise nonfunctioning street lights, decorative elements, signs, clock towers, or artificial trees or shrubs or other such nonfunctioning screening elements made to resemble other objects shall be permitted;
5. Wireless telecommunications facility equipment located above the surface grade in the public right-of-way including, but not limited to those on certain street lights, shall consist of small equipment components that are compatible in structure, scale, function and proportion to the poles they are mounted on. Equipment shall be painted or otherwise coated, per City standard (which may include public art), to be visually compatible with the subject pole. Underground vaults shall employ flush-to-grade access portals and vents that are heel shoe safe and slip safe; provided, however, that this restriction shall not apply in flood prone areas. Installations on City-owned or controlled public facilities shall be subject to applicable fees as approved by the City Council;
6. Facilities shall be designed to be as visually unobtrusive as possible. Applicant shall size antennas, cabinet equipment and other facilities to minimize visual clutter. Facilities shall be sited to avoid or minimize obstruction of views from public vantage points and otherwise minimize the negative aesthetic impacts of the public right-of-way;
7. All cables and conduits shall be routed through the interior of the subject pole; provided, however, that for wood poles all cables and

**conduits shall be mounted and routed in a manner calculated to minimize their visibility;**

**8. All cables shall be screened from public view.**

- F. Local coastal program requirements. New Wireless Telecommunications Facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP).
- G. Coastal permit required. The necessary Coastal Development Permit or Local Coastal Development Permit shall be obtained.

**Suggested Modification 14:** Remove a reference to Chapter 15.34, which is not part of the certified LCP.

Section 21.56.1450.C

Modifications to Wireless Telecommunications Facilities. Any modification to a Wireless Telecommunications Facility or co-location facility, including but not limited to, replacement of antennas, installation of additional antennas, installation of additional equipment cabinets, installation of a backup generator, paint or camouflage changes, and other physical changes to the facility, shall require, at a minimum, an administrative approval, and, if necessary, a building permit from the Department of Development Services. Prior to issuance of any approval for modification, the applicant shall submit an application for an administrative review to determine the compliance of the proposed modification with this Chapter and the existing Conditional Use Permit or other entitlement. For sites not ~~subject to Section 21.56.130 Chapter 15.34~~ (located in the public right-of-way), applications for modification will be subject to the standards and procedures set forth for new Wireless Telecommunications Facilities, as specified in Sections 21.56.030 through 21.56.060, if any of the following apply[...]

## IV. FINDINGS

### A. AMENDMENT DESCRIPTION

This LCP amendment request involves a City-initiated update to the City's Zoning Ordinance (Municipal Code), which is certified as part of its LCP Implementation Plan (IP). No changes to the certified LCP Land Use Plan (LUP) are proposed herein. The City is proposing to amend the City's regulations relating to assembly uses, urban agriculture, wireless telecommunications facilities, and adult-use cannabis, as described in more detail below.

#### Assembly Uses

Part of the subject LCP amendment request relates to assembly uses (**Exhibit 1**). The City proposes to update regulations and development standards for religious assembly uses to be at least as flexible as other uses, classify different size assembly uses and associated permitting requirements, and clarify land use categorizations. These changes are proposed in response to a United States Department of Justice (USDOJ) inquiry and investigation into the City's religious assembly use zoning regulations, where the USDOJ found that some land uses with similar structures like fitness centers and theaters did not require the same permit review process. Thus, the City's existing religious assembly use regulations could be in violation of the Federal

Religious Land Use and Institutionalized Persons Act (RLUIPA), which protects individuals, places of worship, and other religious institutions from discrimination in zoning and landmark laws.

Specifically, the City is proposing modifications to Chapter 21.15 of the City's Municipal Code (*Definitions*) including the addition of "assembly use", "community assembly", "cultural facility", "fitness facility", "parsonage", "public library", and "religious assembly"; minor modifications to the definitions of "communal housing", "institutional use", and "special group residence"; and deletion of the definition of "church". In addition, the City is proposing to amend Table 32-1 (*Uses in All Other Commercial Zoning Districts*) to clarify the meaning of institutional uses, add assembly use categories of varying sizes, clarify that parsonages are accessory to and located on the same parcel as religious assembly uses, and dictate the permitting requirements for each zoning district. These changes, along with the City's proposed changes to Section 21.52.232 (*Fitness or health club, dance or karate studio and the like*), also provide more clarity between the permitting requirements for commercial and religious assembly uses, fitness facility uses, and theater uses to address the USDOJ findings.

The subject amendment request also includes modifications to the descriptions of zoning districts (*Section 21.32.020*) to clarify the intended use and character of neighborhood commercial zoning districts and community commercial zoning districts. Furthermore, the City's LCP amendment request includes the removal of Section 21.52.213 (*Churches and other places designed and intended primarily for religious worship*) from Title 21 of the City's Zoning Code (part of the certified IP) and addition of Section 21.52.219.8 (*Community assembly uses*) to Chapter 21.52 (*Conditional Uses*), which includes standards for the location, development, and operation of community assembly uses. Section 21.52.219.8 includes provisions that allow for waivers and exceptions to zoning code and LCP requirements when necessary to accommodate religious assembly uses in order to ensure compliance with the RLUIPA. Minor changes to the applicability of Site Plan Review requirements for industrial or public assembly uses (*Section 21.25.502.A.3*) are also proposed to clarify the regulation applies to both industrial and public assembly uses and to update the title of the City's certified Mobility Element (**Exhibit 5**).

### **Urban Agriculture**

Another part of the subject LCP amendment request relates to urban agriculture (**Exhibit 2**). Currently, the City does not have a definition of urban agriculture and, thus, it is not recognized as a permitted use. The City proposes to add regulations to Title 21 of the Municipal Code (part of the City's certified IP) relating to urban agriculture to allow the use by-right in multi-family, commercial, and light industrial zones and allow the use within single-family, two-family, and heavy industrial zones subject to the City's review and approval of an Administrative Use Permit. This allows the City to provide tax incentives to landowners of vacant properties who use their property for small-scale agricultural purposes, pursuant to the Urban Agriculture Incentive Zones Act (AB 551, approved September 2013). The City's ordinance also includes the addition of Chapter 8.77 to the City's Municipal Code to implement the City's Urban Agriculture Incentive Zone Program. Title 8 is not part of the Implementing Ordinances of the certified LCP. The City's resolution submits only the amendments to Title 21 as part of the City's LCP amendment request.

The City proposes to add a definition of "urban agriculture use" to Chapter 21.15 (*Definitions*) of the City's Municipal Code. Additionally, the City's amendment request includes the addition of urban agriculture uses to the allowable uses in residential zones (*Table 31-1*), commercial zones

(*Table 32-1 and 32-1A*), and industrial districts (*Table 33-2*), subject to the specified permit requirements. As proposed, urban agriculture use is also added to the section of Chapter 21.52 (*Conditional Uses*) that includes development standards for interim playgrounds, community gardens, and parks (**Exhibit 5**).

### **Wireless Telecommunications Facilities**

A segment of the subject LCP amendment request relates to wireless telecommunications facilities (**Exhibit 3**). Currently, regulations relating to wireless telecommunications facilities are housed within Title 21 of the City's Municipal Code and part of the certified IP. As proposed, regulations for wireless telecommunications facilities in the public right-of-way (PROW) will be removed from Title 21 and an improved version of the regulations will be included in Title 15 of the City's Municipal Code, which is not part of the City's certified LCP. The proposed regulation changes add new standards for location, size, intensity, and aesthetics of small cell wireless telecommunications facilities.

As proposed, modifications to Chapter 21.56 (*Wireless Telecommunications Facilities*) the addition of definitions for "applicable law" and "public right-of-way", removal of the definition of "utility pole", which is also reflected in modifications to Section 21.56.040 (*Development and design standards for new Wireless Telecommunications Facilities that are not co-location facilities*), and expansion of the definition of "wireless telecommunications facility" to include conduits, pull boxes, and electrical meters. A change to the definition of "co-location" to exclude placement in the PROW as a defining element is also proposed and reflected in modifications to Section 21.56.030 (*Permit Requirements for new Wireless Telecommunications Facilities*). The City also proposes a modification to Section 21.56.010 (*Purpose and Objectives*) to require co-location of wireless telecommunications facilities where feasible and consistent with the City's aesthetic and planning objectives. In addition, the City proposes to add a requirement for Wireless Public Right-of-Way Permits for new telecommunications facilities located in the PROW (Section 21.56.030). The City's LCP amendment request also includes the addition of a sentence to the certified section relating to generators and emergency power (Section 21.56.100.J) to prohibit such power sources in the PROW unless approved by the Director of Public Works. Furthermore, the existing Section 21.56.130 (*Additional requirements and standards for Wireless Telecommunications Facilities located in Park Zoning Districts*), which contains specific regulations regarding preferred and required facility siting and design standards, would be removed from Title 21, revised to include additional specificity, and added to Title 15 (not part of the City's LCP). Proposed Section 21.56.140 replaces the reference to this section with a reference to Chapter 15.34. The subject LCP amendment request also renumbers the sections within Chapter 21.56 and replaces references to the ordinance with references to the Chapter (**Exhibit 5**).

### **Adult-Use Cannabis**

Finally, one portion of the subject LCP amendment request relates to adult-use cannabis (**Exhibit 4**). In March 2010, the City added Chapter 5.87 to its Municipal Code to establish a permitting process to allow medical marijuana collectives in the City, which was found to be contrary to Federal law (*Pack v. City of Long Beach*). In 2016, a new set of regulations developed by a Medical Marijuana Task Force (Chapter 5.90 of the City's Municipal Code), was approved to establish a process to begin approving medical marijuana businesses. In addition, in 2016 and 2017 the State approved and passed legislation legalizing the use of marijuana (the Control, Regulate and Tax Adult Use of Cannabis Act) and creating a more comprehensive regulatory structure for medical and adult-use cannabis. As of May 2018, approximately 30 medical

marijuana collectives and businesses, including dispensaries, had been established in the City of Long Beach. Thus, the City is proposing to regulate adult-use cannabis by adding definitions and designating whether the use is permitted, conditionally permitted, or prohibited within specific zones in Title 21 of the City's Municipal Code. In addition, the City proposes to add Chapter 5.92 (*Adult Use Cannabis Businesses and Activities*) to the City's Municipal Code (not part of the City's IP).

The City-proposed changes to the certified IP include the addition of "cannabis cultivation", "cannabis manufacturing", "cannabis distribution", and "cannabis testing" to Chapter 21.15 (*Definitions*). The amendment request also includes that addition of adult-use cannabis to Tables 31-1 (*Uses in Residential Zones*), 32-1 (*Uses in All Other Commercial Zones*), 33-2 (*Uses in Industrial Districts*), 34-1 (*Uses in the Institutional District*), and 35-1 (*Uses in Park Districts*). As proposed, adult-use cannabis uses are prohibited in park districts, institutional districts, the port district, commercial storage (CS) district, or in high density, multi-family residential district (R-4-U). The proposed changes would allow lab testing and cannabis dispensaries as a permitted use in all other commercial districts and in some industrial districts (**Exhibit 5**). Only some commercial areas in the coastal zone are affected by the subject LCP amendment request.

The City's LCP amendment request also includes changes to the Zoning Code (Title 21) that are not directly related to the four categories of regulations listed above. These changes include: updates to the notes for Table 31-1 (*Uses in Residential Zones*), 32-1, and 32-1A, references to an additional certified section of Title 21 for private elementary or secondary school uses (Table 32-1), addition of fortunetelling to the list of basic personal service uses (Table 32-1), and a revision to the title of retail sales (Table 32-1). As proposed, these modifications to the City's certified zoning code are intended to add specificity to the existing certified regulations.

In summary, the LCP amendment, as proposed by the City, would clarify and make more specific, in some cases, its regulations relating to community assembly uses and wireless telecommunications facilities and add new regulations relating to urban agriculture and adult-use cannabis.

## **B. REJECTION OF LCP AMENDMENT AS SUBMITTED**

Under Sections 30513 and 30514(b), the Commission shall certify a proposed amendment to an IP unless it does not conform with, or is inadequate to carry out the provisions of the certified LUP.

Many of the City's proposed changes to the certified IP, described above, do not raise Coastal Act issues. These include: the updated notes in Table 32-1 and 32-1A, the additional private school use reference, addition of fortunetelling to basic personal service uses, the revised title for retail uses, new, modified, and removed definitions, addition of lab testing to allowable commercial uses, minor language changes, changes to section numbers, and clarifications of fitness and theater land use regulations. Thus, these changes are adequate to carry out and conform with the provisions of the certified LUP. The following sections highlight portions of the City's LCP amendment request that are not adequate to carry out the provisions of the certified LUP.

### **Assembly Uses**

As proposed by the City (**Exhibit 5**), the new community assembly use section (Section 21.52.219.8) includes a process whereby exceptions or waivers of the requirements of the City's Zoning Code can be granted by the City Planning Commission or Zoning Administrator for religious assembly uses. While this section states that, in the coastal zone, such an exception or waiver can only be granted if consistent with the LCP, that statement is immediately followed by a process by which the City can waive compliance with the LCP if the City finds the request is consistent to the maximum extent feasible with the LCP. A waiver of LCP requirements, including the policies of the certified LUP, without adequate constraints to ensure coastal resources are protected is not adequate to carry out the provisions of the LUP.

The City's certified LUP policies protect such resources by, for example, calling for a "*balance between human use and ecological concerns*" (Introduction, Coastal Resources) and prohibiting public parkland from being committed to another use unless replaced on an acre-for-acre basis (Park Dedication Policy). Additionally, the certified LUP includes specific permitted land uses and development policies that include restrictions for subareas in the coastal zone to encourage visitor-serving and other water-dependent uses, maintain public access to coastal areas, and protect biological resources (including, but not limited to, Downtown Shoreline Policy Plan permitted uses, environmentally sensitive habitat area description, and access policies; Resource Management Plan and Open Space and Recreations goals; Area C access and Colorado Lagoon policies). The Open Space & Recreation Element of the certified LUP contains goals and policies "*to preserve areas which serve as natural habitats for fish and wildlife species,*" "*to develop well-managed, viable ecosystems that support the preservation and enhancement of natural and wildlife habitats*" (Goal 1.1), and to "*protect and improve the community's natural resources...*" (Policy 1.2). Therefore, while the certified LUP does not explicitly reference community or religious assembly uses, development must be sited and developed in a manner that is protective of coastal resources. In the Coastal Zone, the LCP policies protecting coastal resources currently apply to religious assembly uses in the same manner they apply to fitness centers, theaters, and all other uses subject to a coastal development permit. Thus, it is not necessary or appropriate for the City to waive compliance with the LCP in order to comply with RLUIPA.

For the reasons described above, as proposed, Amendment Request No. 3-18C is not adequate to carry out the provisions of the certified LUP.

### **Urban Agriculture**

Another proposed change is the addition of urban agriculture use regulations to the City's Zoning Code (Title 21). As proposed, this use would be allowed by-right or with an Administrative Use Permit in parts of the coastal zone that are located adjacent or in close proximity to bodies of water, including, but not limited to, Alamitos Bay, Colorado Lagoon, the Los Cerritos Channel, and the San Gabriel River, and to coastal bluffs. Agricultural uses, including small-scale urban agriculture, can impact surface water and ground water quality through runoff and percolation of nutrients and pesticides, and they can also impact bluff stability through runoff.

The Open Space & Recreation Element of the certified LUP contains goals and policies "*to preserve areas which serve as natural habitats for fish and wildlife species,*" "*to develop well-managed, viable ecosystems that support the preservation and enhancement of natural and wildlife habitats*" (Goal 1.1), and to "*protect and improve the community's natural resources...*"

(Policy 1.2). It also contains a program to “*preserve and protect water resources available to the City of Long Beach*” (Program 2.3). In addition, the City’s Resource Management Plan includes a goal “*to improve and maintain[ed] water quality*”. Public views of the ocean are also protected through policies of the certified LUP including requirements for maintenance of “*open vistas of the ocean across public lands*” (Open Space & Recreation Element) and for development to “*maximize view corridors*” along Ocean Boulevard (Downtown Shoreline, Shoreline Access). Furthermore, the LUP includes hazard policies like the following policy for Area B: “*Bluff erosion and slumping which may be hazardous should be stabilized by planting and diversion of run-off waters away from the face of the bluff.*” As proposed, the City’s changes to Title 21 do not include any regulations that ensure water quality and other coastal resources are not adversely impacted by urban agriculture uses and associated accessory development. Thus, Amendment Request No. 3-18C, as submitted, does not protect water quality, bluff stability, or public blue water views and could, therefore, adversely impact natural habitats, bluff stability, and view corridors in the coastal zone inconsistent with the aforementioned LUP provisions. Therefore, while Amendment Request No. 3-18C provides incentives to develop vacant lots with a use that can provide locally sourced food, which could improve visual resources, energy efficiency and vehicle miles travelled, and community resiliency, as proposed, it would be inconsistent with the referenced sections of the City’s certified LUP.

#### **Wireless Telecommunications Facilities**

As stated above, public views of the ocean are protected through policies of the certified LUP including requirements for maintenance of “*open vistas of the ocean across public lands*” (Open Space & Recreation Element) and for development to “*maximize view corridors*” along Ocean Boulevard (Downtown Shoreline, Shoreline Access). The City-proposed changes to Chapter 21.56 (*Wireless Telecommunications Facilities*) make the regulations for wireless telecommunications facilities in the public right-of-way less specific than the existing certified regulations, which include priority siting and design standards that minimize impacts to public views, by removing them from the Chapter. In addition, the City also proposes new permitting and approval requirements for wireless telecommunications facilities and emergency power generators that do not clarify permitting and approval requirements in the coastal zone. This lack of specificity could result in adverse impacts to coastal resources including water quality, sensitive habitat areas, and public views, inconsistent with multiple LUP provisions (Open Space and Recreation Element Goal 1.1 and Policy 1.2, Resource Management Plan goals, and Downtown Shoreline view corridor map). For example, if an applicant did not know to get approval from the Commission for a development in the Commission’s retained jurisdiction area and instead only received the required approval from the City’s Department of Public Works, which may not be as familiar with the management of environmentally sensitive areas within the Commission’s retained jurisdiction, then there would be a higher chance that the new facility would be allowed in sensitive areas without adequate coastal resource impact avoidance measures. Additionally, it is not clear how the City will apply the new regulations within its jurisdiction of the coastal zone, because the new provisions are proposed to be contained in a portion of the Municipal Code that is not part of the LCP. Therefore, as proposed these specific changes are not adequate to carry out the water quality and habitat protections provisions of the LUP (see some such LUP provisions in the previous Urban Agriculture section).

#### **Adult-Use Cannabis**

On July 18, 2018, the Commission published guidance for local governments relating to cannabis in the coastal zone and regulatory requirements with the Coastal Act. The guidance suggests that cannabis-related development activities, including cannabis cultivation,

processing, manufacturing, distribution, and retail, have the potential to impact coastal resources, mostly as a result of conversion of agricultural land, limitations on parking availability, noise, odor, and installation of security measures including fencing.

In this case, in the coastal zone, adult-use cannabis uses are proposed to be added to commercial zones located at the inland extent of the coastal zone in Areas A and B and within the 2<sup>nd</sup> Street commercial area (Area D) as delineated in the City's certified LUP. These areas are highly urbanized and are not located adjacent or in close proximity to any waterways, parklands, or environmentally sensitive areas. Additionally, there are no view corridors in these areas. Area A policies include requirements that commercial facilities located on Broadway, which the subject applicable areas are, "*shall be limited to retail uses which are neighborhood-serving*" and give preference to walk-in trades. The City's LCP amendment request is consistent with these policies. Similarly, the Area B policies of the LUP encourage primarily neighborhood-serving commercial development that "*shall be in harmony with the character of the surrounding neighborhood*" and promote community stability and desirability. The character of the Second Street shopping district is also preserved in the LUP. Development in these areas must comply with the certified standards in Title 21, including but not limited to parking requirements and fencing standards, and CDP requirements. Therefore, as proposed, the changes are, generally, adequate to carry out the provisions of the certified LUP.

However, the City proposes to add references to Chapter 5.92 (*Adult Use Cannabis Businesses and Activities*), which is not part of the certified LCP and, therefore, such provisions would not be reviewed by the Coastal Commission for potential impacts to coastal resources. The proposed references could allow the City to indirectly incorporate changes that may be inconsistent with the City's certified LCP and/or the Coastal Act into the IP without Coastal Commission certification. Thus, the City's proposed inclusion of external references in the IP is inconsistent with the certified LUP.

Similarly, the change to the notes associated with Table 31-1 that is included in the City's LCP amendment request includes the addition of notes that have not been certified by the Commission. In this case, the City's ordinances do not provide sufficient context to understand what land uses the notes apply to or their potential impact on coastal resources. Thus, the Commission cannot determine whether these notes conform with the certified LUP policies.

As proposed by the City, Amendment Request No. 3-18C is not adequate to carry out the policies of the City's certified LUP and must be rejected.

### **C. APPROVAL OF LCP AMENDMENT IF MODIFIED AS SUGGESTED**

The City's proposed LCP amendment does not conform with, and is not adequate to, carry out the policies of the certified LUP as submitted. In December 2019, Commission staff published a staff recommendation with twelve suggested modifications to address the inadequacies described above. The City requested postponement to allow additional time for coordination with Commission staff and the USDOJ. After such coordination, the suggested modifications have been modified to address the City's concerns specific to religious assembly uses, and include new policies requiring protection of coastal resources that will apply to all uses and projects in the coastal zone, including religious assembly uses. The following fourteen modifications are necessary to clarify and make the City's IP consistent with the LUP policies.



**Suggested Modification 1** revises the categories of development projects that require local coastal development permits and the procedures for exclusion of development from CDP requirements in order to add coastal resource protections. Previously (prior to postponement of action on the LCP amendment in December 2019), Commission staff had suggested modifications to add policies directly to the City's proposed urban agricultural use and assembly use regulations for development in the coastal zone. These modifications included assurances that development would be consistent with LCP policies, added policies to protect coastal views, water quality and runoff control best management practices for urban agriculture, and limits on locations for allowed expansion of assembly uses, which were required in order for the proposed LCP amendment to be found consistent with the LUP policies described in Section B of this staff report. The revised suggested modifications (Suggested Modifications 1 and 2), which were developed through a combined effort from City staff and Commission staff, condense and relocate the resource protections to the section of the City's IP that dictates which types of development require a local CDP and what findings must be made to both determine a project is exempt from CDP requirements and to approve a CDP.

Specifically, Suggested Modification 1 adds extensions of existing facilities into tidelands, environmentally sensitive areas, coastal waterways, public parkland, or within 50 feet of a coastal bluff edge to the list of types of projects that require CDPs. Additionally, it is suggested that language be added to one of the categories of development that is exempt from CDP requirements to require projects be found consistent with the LCP, applicable water quality standards, best management practices and pollution controls (not just the Zoning Code, as currently written). This serves not only to add resource protections to the urban agriculture and religious use regulations, but to add resource protections to all development that expands existing facilities in the coastal zone and hold projects that can be exempt from CDP requirements to higher standards that afford more protection of coastal resources.

The LUP requires protection of ocean views and that view corridors be maximized (Open Space & Recreation Element and Downtown Shoreline, Shoreline Access). It also includes goals of improving and maintaining the City's water quality (Resource Management Plan), preservation of habitats for fish and protection of natural resources (Open Space & Recreation Goal 1.1 and Policy 1.2), and prohibitions on the displacement of public parkland, unless replaced on an acre-for-acre basis (Park Dedication Policy). In addition, the hazards policies in the LUP for Area B acknowledge that uncontrolled runoff can contribute to bluff instability and should be diverted away from the bluff face. Under the City's current IP, any project that is consistent with the City's Zoning Code and does not require discretionary review, can be exempt from CDP requirements (with a couple other exceptions).

The suggested modification is necessary because new urban agriculture, community assembly, or religious assembly uses could be proposed to be sited in areas that would adversely impact the sensitive resources protected by the LUP policies cited above. By requiring a CDP for such development, these modifications ensure that the development may only be approved if it is consistent with the LCP, including these policies. By requiring consistency with the LCP and best management practices, all development in the coastal zone must now be consistent with the policies of the LCP, including the LUP's water quality, geologic stability, view preservation, and natural resource protection policies. Furthermore, by adding expansions of existing facilities into sensitive coastal areas to the list of development types that require a local CDP, projects that have the potential to impact sensitive coastal resources, but may currently be exempt under the existing IP, will now be required to go through the City's CDP process. Thus, the City will have

additional authority to review projects that have the potential to impact coastal waterways, habitat, and geologic stability for consistency with the LCP and, for projects seaward of the nearest public highway, the public access and recreation policies of the Coastal Act.

Therefore, as modified, the City's proposed assembly use and urban agriculture regulations are no longer inconsistent with the LUP because the regulations relating to CDP requirements for all uses and projects are adequate to carry out the provisions of the LUP.

**Suggested Modification 2** adds to the list of required findings for approval of a local CDP and clarifies the relationship between the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and the City's certified LCP to protect coastal resources. As described above, prior to postponement of action on the LCP amendment in December 2019, Commission staff had suggested modifications to the religious use and urban agriculture regulations to ensure projects are consistent with the LCP, add water quality and runoff control best management practices for urban agriculture, and clarify the standard for the City's proposed waiver of LCP requirements for religious use projects. Suggested Modification 2 adds two new findings required in order to approve a CDP, which are necessary to find the proposed LCP amendment consistent with the City's certified LUP.

The first finding suggested to be added to Section 21.25.904.C is a clarification that addresses the City's proposed exception or waiver of LCP requirements if such waiver or exception is necessary to avoid violating the RLUIPA under Section 21.52.219.8.G. The proposed community assembly use regulations of the City's IP would potentially relax permitting requirements for community assembly uses and allow exceptions and waivers to otherwise applicable requirements of the LCP for religious assembly uses as long as the City makes a finding that the request is consistent "to the maximum extent feasible" with the certified LCP. The policies of the LCP are generally applicable throughout the City's coastal zone, apply to all land uses in the same manner, and are not expected to be imposed or implemented in a manner that imposes a substantial burden on the exercise of religion, in violation of the requirements of RLUIPA. The standard for waiving LCP requirements proposed by the City, while potentially acceptable in areas outside of the coastal zone, is not adequate to ensure protection of coastal resources in the coastal zone, as it is highly discretionary and unclear as to what is meant by "maximum extent feasible." Therefore, in the highly unlikely event that implementation of the LCP would result in a violation of RLUIPA for religious assembly use projects in the coastal zone, language is added to Section 21.25.904.C, through Suggested Modification 2, that clarifies the findings required for the City to issue a CDP where a waiver is sought under Section 21.52.219.8.G. Specifically, the City must find that the waiver or exception to LCP requirements must be the "minimum necessary to address the RLUIPA violation," and the development would still be required to be consistent with all other provisions of the LCP.

Section 21.52.219.8.G, as proposed by the City, is not as specific as the language suggested through this modification and, alone, could result in more extensive waivers of LCP consistency for religious use projects in the coastal zone that go beyond what is absolutely necessary to address an RLUIPA violation. However, Section 21.25.904 applies to all development in the coastal zone that requires a local CDP. Therefore, Suggested Modifications 1 and 2 make clear that all projects that are inconsistent with the LCP require a CDP (which would include religious assembly projects that require a waiver or exception under Section 21.52.219.8.G), and establishes additional and more specific requirements for CDP approval, thereby making clear that: a) applications for religious assembly uses may still require a CDP if the projects require a

waiver or exception from the LCP, and b) if there is a project where compliance with the LCP would result in an RLUIPA violation, the City could approve a CDP that is inconsistent with the LCP only if it is the minimum deviation necessary. These modifications are required to ensure that the exception or waiver process created by the City will be implemented in a manner that is consistent with the LUP policies cited above and that any deviations required to comply with federal law are the minimum necessary to avoid a violation of RLUIPA.

The second added required finding is that all development shall minimize transport of pollutants by runoff into coastal waters and groundwater, minimize increases in runoff volume and velocity that may impact coastal resources, and implement best management practices. Although urban agricultural uses are smaller-scale than agricultural uses in rural areas, there is still the potential for such uses to adversely impact water quality. For example, fertilizers or pesticides could be applied in a manner that contributes to the transport of pollutants off site and into coastal waters or groundwater. The City's Resource Management Plan includes a goal of improving and maintaining the City's water quality, and Open Space & Recreation Goal 1.1 and Policy 1.2 require the preservation of habitats for fish and the protection of natural resources. In addition, the hazards policies in the LUP for Area B acknowledge that uncontrolled runoff can contribute to bluff instability and should be diverted away from the bluff face. Thus, Suggested Modification 2 requires that development, which includes urban agriculture development, be sited, designed, and managed to minimize runoff and velocity from such sites. The modification also includes a requirement that best management practices be implemented consistent with required water quality permits, LCP standards and guidance, and measures recommended by the City Engineer, as applicable. Again, this modification expands resource protections beyond the subject proposed regulations to all development requiring CDPs in the coastal zone.

With these modifications, the IP amendment is adequate to carry out the requirements of the LUP that protect water quality and habitats.

**Suggested Modifications 3, 4, 6, and 8** clarifies requirements for development in the coastal zone both in the IP regulations and in the IP's land use tables (Title 21). As proposed by the City, Tables 32-1 and 33-2 include references to the adult-use cannabis business regulations in Chapter 5.92, which is not certified. Provisions not included in the certified IP would not be reviewed by the Coastal Commission for potential impacts to coastal resources. Therefore, Suggested Modification 3 is required to clarify that projects in the coastal zone are subject to LCP requirements, including CDP requirements. In order to approve a CDP, the City must find that the development is consistent with the certified LCP. Thus, as suggested to be modified, any regulation or policy within uncertified segments of the City's Municipal Code that are inconsistent with the LCP would be overridden by the requirement projects to be consistent with the LCP. As modified, the City's proposed references to municipal code chapters that are not part of the certified LCP are no longer inconsistent with the LUP and are adequate to carry out its provisions.

**Suggested Modification 5** modifies Table 32-1 in order to correct references to other LCP sections and clarify requirements for development in the coastal zone. The corrected references are necessary to eliminate confusion and to ensure proper implementation of the IP. For the reasons described above for Suggested Modifications 3, 4, 6, and 8, the clarifying language ensures that LCP requirements apply to development in the coastal zone so that references to municipal code chapters that are not part of the certified LCP, which could affect coastal resources if altered without Commission review, will not be interpreted to override LCP

requirements. For the same reasons listed in the previous discussion of Suggested Modifications 3, 4, 6, and 6, Suggested Modification 5 is required for the subject LCP amendment request to conform with the certified LUP. As modified, the proposed amendments to Table 32-1 are adequate to carry out the provisions of the LUP.

**Suggested Modification 7** similarly acknowledges that development in the coastal zone is subject to LCP and CDP requirements and updates the IP language to be consistent with the City's terminology used throughout the IP and Municipal Code (uncertified). For the same reasons listed in the previous discussions of Suggested Modifications 3 through 6 and 8, Suggested Modification 7 is required for the subject LCP amendment request to conform with the certified LUP.

**Suggested Modification 9** fixes a typographical error.

**Suggested Modification 10** clarifies the language in the urban agriculture use regulations and fixes a typographical error. As proposed, it is unclear which provisions apply to urban agriculture uses only and which do not. In addition, as proposed, limits on development and setback standards apply to "accessory buildings and structures." If the language remained as is, allowable improvements in interim playgrounds, community gardens, recreational parks, and urban agricultural lands would include any structure, when the intent is to only allow minor developments including accessory structures. In the coastal zone, some of such open space and recreation areas are located adjacent to waterways and habitat areas, which are protected by LUP policies that require the preservation and enhancement of natural and wildlife habitats (Open Space & Recreation Goal 1.1) and the protection and improvement of the community's natural resources (Open Space & Recreation Policy 1.2). Development of a structure with large massing in such open space areas could, therefore, be inconsistent with the LUP. As modified, the intent of the regulation is clarified and the proposed LCP amendment is adequate to carry out the provisions of the LUP.

**Suggested Modification 11** clarifies that wireless telecommunications facilities in the coastal zone may require a CDP in addition to a Wireless Right-of-Way Facility Permit.

**Suggested Modification 12** provides notice to applicants that placement of emergency power generators, which are allowed to be diesel generators, within the public right-of-way within the Commission's retained permit jurisdiction require approval of the Coastal Commission or its Executive Director, in addition to the City's Director of Public Works. This modification is necessary to prevent the placement of a diesel generator or emergency power source without compliance with the Coastal Act. The City does not have the jurisdiction to approve development within the Commission's retained jurisdiction, so the reference to needing only the authorization of the Director of Public Works could be confusing to an applicant proposing work within the Commission's retained jurisdiction. It is particularly important to identify the need for Coastal Act consistency here, as new emergency power sources could be proposed in an environmentally sensitive area or a view corridor within the Commission's retained permit jurisdiction area. Review of emergency development pursuant to Coastal Act requirements would ensure that an alternative with the least impacts to coastal resources is selected and appropriate resource protection measures, including, but not limited to, fuel spill and pollution prevention measures, are required to be implemented consistent with Chapter 3 of the Coastal Act, with the certified LCP as guidance. Therefore, as modified, the City's proposed changes to

Section 21.56.100.J would be adequate to carry out the view protection policies and the natural resource protections policies (sited in the previous sections) of the certified LUP.

**Suggested Modification 13** maintains LCP standards for wireless telecommunications facilities in the public right-of-way by incorporating a segment of the City's proposed regulations in Chapter 15.34 (improved from existing Section 21.56.130) into the certified IP Section 21.56.120 for requirements for telecommunications in the coastal zone. The PROW includes approximately 25 parks in the coastal zone that are designated in perpetuity as public parkland. These parks and the public beach are zoned Park and, therefore, the existing Section 21.56.130 (*Additional requirements and standards for Wireless Telecommunications Facilities located in Park Zoning Districts*) applies to these areas. The removal of this section from the certified IP would make the City's proposed regulations for wireless telecommunications facilities in the PROW less specific than the existing certified regulations and could allow development to be approved which would adversely affect public parkland in the coastal zone.

Public views of the ocean are protected through policies of the certified LUP including requirements for maintenance of "*open vistas of the ocean across public lands*" (Open Space & Recreation Element) and for development to "*maximize view corridors*" along Ocean Boulevard (Downtown Shoreline, Shoreline Access). The City's proposed Chapter 21.56 contains regulations for wireless telecommunications facilities in the coastal zone that mirror the siting and design standards of the current LCP and guide the City's actions relating to wireless telecommunications facilities in the Park areas. However, the existing regulations which clearly apply to development in the coastal zone under the current LCP would be revised and relocated to a portion of the City's Municipal Code that is not part of the certified IP. The revised regulations are more specific than the existing regulations and apply to the entire PROW, rather than only that within Park Zoning Districts. Suggested Modification 8 recommends that the City add portions of the revised PROW regulations that prevent interference with the PROW, including interference with pedestrian access and visibility along a PROW, prioritize antennae and equipment locations, minimize alterations to landscaping, and require facilities to be designed to be as visually unobtrusive as possible, to the IP, so that they apply both within and outside the coastal zone. Other changes to wireless telecommunication facility regulations that will not adversely affect coastal resources may be contained in chapters that are not part of the certified LCP, but suggested modification 8 is required so that the IP includes the portions of the wireless telecommunications regulations that provide protection for coastal resources.

As suggested, these regulations are maintained within the existing certified section within Chapter 21.56 that is specific to wireless telecommunications facilities in the coastal zone. The existing regulations in this section include requirements to prohibit the location of such facilities between the first public highway and the sea or bay, locate the facility so that impacts to public views are avoided or minimized, comply with all applicable policies of the LCP, and obtain the necessary CDP. These regulations were certified by the Commission through LCP Amendment No. 4-13. The combination of the certified coastal zone wireless telecommunications facilities regulations and the City's revised regulations for wireless telecommunications facilities in the PROW, maintains regulatory specificity and ensures that coastal views will be protected. Therefore, as modified, this specific change is adequate to carry out the provisions of the certified LUP.

**Suggested Modification 14** removes a reference to Chapter 15.34, which is not part of the certified LCP. The proposed references would allow the City to indirectly incorporate policy

changes that may be inconsistent with the City's certified LCP and/or the Coastal Act into the IP without Coastal Commission certification. The recommended removal of the reference does not change the intent of the section and brings the City-proposed Section 21.56.140 into conformance with the certified LUP.

With the fourteen suggested modifications described above, the proposed amendment is consistent with and adequate to carry out the certified LUP.

#### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing environmental review documentation in connection with its activities and approvals necessary for the preparation and adoption of an LCP. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Thus, under Section 21080.5 of CEQA, the Commission's review and analysis of the LCP amendment in this staff report satisfies CEQA environmental review requirements. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Long Beach LCP Amendment No. 3-18C consists of an amendment to the Implementation Plan (IP) of City's certified LCP.

As outlined in this staff report, the proposed LCP Amendment, if modified as suggested, will be consistent with the policies of the LUP. Thus, the Commission finds that the LCP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LCP. The Commission finds that approval of the LCP Amendment, as modified, will not result in significant adverse environmental impacts under the meaning of CEQA and will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code. Furthermore, as modified, there are no other feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the LCP amendment may have on the environment.

**THE FOLLOWING MODIFICATIONS TO ORDINANCES ( ) ARE RECOMMENDED BY THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION TO THE IMPLEMENTATION PLAN OF THE ADOPTED LOCAL COASTAL PROGRAM**

Text proposed by the City to be added to the IP is underlined.

Text proposed to be removed by the City is ~~struck through~~.

Text added by the modification is **bold and underlined**.

The City's proposed text that is deleted by the modification is ~~**struck through, bold, and underlined**~~.

**Modification 1:**

21.25.903 – Permit Required.

All development in the coastal zone shall be required to obtain either a coastal permit pursuant to Section 21.25.904 or a coastal permit categorical exclusion pursuant to Section 21.25.906. Such approval must be issued prior to the start of development and shall be required in addition to any other permits or approvals required by the City.

A. **Coastal Permit Issued by the Coastal Commission.** Developments on tidelands and submerged lands require a permit issued by the California Coastal Commission in accordance with the procedure as specified by the California Coastal Commission.

B. **Coastal Permits Issued by the City.** The following categories of projects require coastal permits in accordance with the procedures set forth in this Division:

1. Development on the first lot located on, adjacent to, across the street from, or abutting the beach, bay, ocean or tidelands, except minor addition to a single-family residence as specified in Subsection 21.25.903.C (categorical exclusion).
2. All development projects which require additional discretionary review (such as a conditional use permit, subdivision map or standards variance).
3. Traffic improvements which do not qualify for categorical exclusion.
4. Public works projects, excluding traffic improvement projects, with an estimated cost of fifty thousand dollars (\$50,000.00) or more.
5. **Any extension of an existing facility into tidelands, environmentally sensitive areas, coastal waterways, public parkland, or within fifty (50) feet of a coastal bluff edge.**

C. **Exemptions.** The following categories of projects are exempt from the coastal permit requirement. However, a coastal permit categorical exclusion (CPCE) shall be obtained pursuant to the procedures indicated in Section 21.25.906.

1. Minor additions on existing single-family residences for the first lot located on, adjacent to, across the street from, or abutting the beach, bay ocean or tidelands.

Such additions must be less than ten percent (10%) of the existing floor area and shall not create an additional story or loft.

2. All projects (excluding the above) which are consistent with the Zoning Regulations, **Local Coastal Program, applicable water quality standards, best management practices and pollution controls**, and which do not require any discretionary review (e.g., conditional use permit, subdivision map).
3. Traffic improvements which do not:
  - a. Alter roadway or intersection capacity by more than ten percent (10%) (except stop signs and stop lights); or
  - b. Decrease parking (except by establishing a red curb next to a corner); or
  - c. Impair access to the coast.
4. Public works projects (excluding traffic improvements) with an estimated cost of forty-nine thousand nine hundred ninety-nine dollars (\$49,999.00) or less.

**Modification 2:**

21.25.904.C – Findings Required.

**Findings Required.** Prior to approving a local coastal development permit, the responsible hearing body must find:

1. The proposed development conforms to the certified local coastal program including but not limited to all requirements for replacement of low- and moderate-income housing; and
2. The proposed development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act. This second finding applies only to development located seaward of the nearest public highway to the shoreline.
3. **For an application for a religious assembly use, if an exception or waiver of LCP requirements is sought under Section 21.52.219.8.G, that the exception or waiver allows the minimum deviation from LCP requirements necessary to comply with RLUIPA, and that the decision maker has imposed all conditions necessary to comply with all provisions of the LCP, with the exception of the provision(s) for which implementation would violate RLUIPA.**
4. **The proposed development is sited, designed and managed to minimize the transport of pollutants by runoff into coastal waters and groundwater, and to minimize increases in runoff volume and velocity from the site which may adversely impact coastal resources or coastal bluff stability. Best Management Practices shall be implemented, as applicable, including but not limited to applicable local, regional, state and federal water quality permits, standards and guidance provided in the LCP, best practices and other measures as may be recommended by the City Engineer.**



**Modification 3:**

21.31.110 – Permitted uses.

Table 31-1 indicates all uses permitted (Y), not permitted (N), permitted by conditional use permit (C), permitted as an accessory use (A) and permitted as a temporary use (T) in the residential zones. Permitted uses with an asterisk (\*) are subject to special development standards contained in Chapter 21.45 of this Title. Accessory uses, conditional uses and temporary uses also have special development standards, as set forth in Chapters 21.51, 21.52 and 21.53, respectively. **All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX.**

**Modification 4:**

Table 31-1 – Uses Residential Zones (*Text to be inserted at the end of the table immediately before the list of Abbreviations*)

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Suggested Modification 5:**

Table 32-1. Uses in All Other Commercial Zoning Districts

Public and Semi-Public Institutional	CN P	CA N	CN R	CC A	CC P	CC R	CC N	CH W	C S	
Church or temple Religious assembly uses with 1) up to 2,501 sq. ft. of GFA, or 2) 100 or fewer occupants	N Y	AP Y	AP Y	AP Y	AP Y	AP Y	AP Y	AP Y	N	Also see Section 21.52.213 See Section <b><u>21.45.125</u></b> <b><u>21.52.219.8</u></b> Religious Assembly
Religious assembly uses with 1) between 2,501 sq. ft. and 25,000 sq. ft. GFA, or 2) more than 100 occupants	AP	AP	AP	Y	AP	Y	Y	Y	N	Uses shall be permitted (Y) in the PD-30 Downtown Plan Area (excluding Neighborhood Overlay), subject to Section <b><u>21.45.125</u></b> <b><u>21.52.219.8.</u></b>
Religious assembly uses with over	N	N	N	C	N	C	C	C	N	

25,000 square feet of GFA [...]										
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*(The following text is to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Modification 6:**

Table 32-1A – Uses in Commercial Zoning Districts *(Text to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Modification 7:**

Section 21.33.060.C

Table 33-2 shall be used to determine applicable use regulations in the industrial districts. Table 33-2 establishes general classes of uses. For each category, the table indicates whether the class of use is permitted by right (Y); not permitted (N); permitted subject to an administrative use permit (AP) as defined in **ChapterSection 21.25, Division IV (Administrative Use Permits)** of this Title; or permitted subject to conditional use permit review (C) pursuant to **ChapterSection 21.25, Division II (Conditional Use Permits)** of this Title. **All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX.**

**Modification 8:**

Table 33-2 – Uses in Industrial Districts *(Text to be inserted at the end of the table immediately before the list of Abbreviations)*

**All projects within the Coastal Zone are also subject to the Local Coastal Program and provisions as set forth in Chapter 21.25 Division IX. Use, operating and other regulations contained outside of Title 20 and Title 21 are not certified by the California Coastal Commission.**

**Modification 9:** Fix a typographical error.

21.52.232 – Fitness or health club, dance or karate studio and the like.

A. The use shall demonstrate adequate parking for peak demand;

B. The facility shall be limited to five thousand (5,000) sq. ft. square feet of gross usable floor area in neighborhood commercial zones (CNP, ~~CANCNA~~ and CNR).

**Modification 10:**

21.52.260 – Interim Playgrounds, urban agriculture use, community gardens and recreational parks

The following shall apply to interim playgrounds, community gardens and recreational parks. Only A, B, and C only apply to urban agriculture uses:

- A. Improvements for an interim playground/community garden/recreational park shall be limited to landscaping, irrigation systems, accessory buildings and accessory structures.
- B. The following setbacks shall be the same apply to all accessory buildings and accessory structures:
  - 1. Front. The front setback shall be the same as a principal structure in the applicable zoning district.
  - 2. Side. A four-foot (4') side setback is required when abutting a residential district otherwise none is required.
  - 3. Rear. A ten-foot (10') rear setback is required when abutting a residential district otherwise none is required.
- C. The maximum height of any accessory building shall be thirteen feet (13').
- D. The interim playground/community garden/recreational park hours of operation shall be seven-thirty (7:30) a.m. to dusk.
- E. Off-street parking shall not be required for an interim playground/community garden/recreational park use.
- F. Adequate trash receptacles shall be provided and maintained for the life of the use.

**Modification 11:**

Section 21.56.030.C

Locations in the public right-of-way. A Wireless Right-of-Way Facility Permit shall be required for the initial construction and installation of all new Wireless Telecommunications Facilities in accordance with all procedures set forth in Chapter 15.34. In the coastal zone, a Coastal Development Permit may be required for new Wireless Telecommunications Facilities development in accordance with all procedures set forth in Division IX of Chapter 21.25.

**Modification 12:**

Section 21.56.100.J

Generators and emergency power. Diesel generators are allowed as an emergency power source, although they are discouraged. When a feasible alternative technology for permanent on-site backup power becomes available (for example, fuel cells) the Department of Development Services may require the use of such technology in lieu of a diesel generator, unless the applicant provides written documentation explaining why such an alternative is not feasible. All generator installations shall comply with all containment requirements of the applicable Fire and Building Codes, without exception. Unless otherwise approved by the Director of Public Works or if within the Coastal Commission's retained permit jurisdiction area, by the Coastal Commission or its Executive Director, generators and emergency power source for wireless facilities located in the public right-of-way are prohibited.

**Modification 13:**

Section 21.56.120 – Additional requirements and standards for Wireless Telecommunications Facilities and co-location facilities in the coastal zone.

- A. Location. New Wireless Telecommunications Facilities shall not be located between the first public highway and the sea or bay, unless no feasible alternative exists, and the facility is not visible from a public location, or will be attached to an existing structure in a manner that does not significantly alter (in the determination of the Staff Site Plan Review Committee) the exterior appearance of the existing structure.
- B. Operational Interference with Public Rights-of-Way. No part of a wireless telecommunication facility shall alter vehicular circulation or parking within the public right-of-way, nor shall it impede vehicular and/or pedestrian access or visibility along any public right-of-way. No permittee shall locate or maintain wireless telecommunication facilities to unreasonably interfere with the use of City property or the public right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic on City property or the public right-of-way, interference with public utilities, and any such other activities that will present a hazard to public health, safety or welfare when alternative methods of construction would result in less disruption. All such wireless telecommunications facilities shall be moved by the permittee, at the permittee's cost, temporarily or permanently, as determined by the Director of Public Works.
- C. Aesthetic Impacts. All wireless telecommunication facilities shall be designed and located to eliminate or substantially reduce their visual and aesthetic impacts upon the surrounding public rights-of-way and public vantage points. To accomplish this goal, all wireless telecommunication equipment shall be developed with the intent of locating and designing such facilities in the following manner and order of preference (from top to bottom). In instances where a facility is proposed for installation at a location

or in a manner that is not the highest preference for each of the following categories, the applicant shall make a factual showing that all higher preferences are infeasible:

**1. Antenna preferences:**

- a. On an existing public utility pole;
- b. On a replacement street light pole;
- c. On an existing structure other than a street light pole or utility pole in the public-right-of-way;
- d. On a new structure other than a street light pole or utility pole in the public right-of-way (e.g., wireless telecommunication kiosk);
- e. On an existing non-wood utility pole;
- f. On a new non-wood utility pole;
- g. On an existing wood utility pole.

**2. Equipment preferences (for all appurtenant equipment, including, but not limited to, radio units, power supplies, voltage converters, and electrical service connections and meters):**

- a. When bundled in an all-in-one equipment cabinet with the antenna(s), provided, however, that the size of the cabinet shall be minimized to the satisfaction of the Director of Public Works;
- b. Within a below-grade equipment vault, or on a street light pole or utility pole that does not place new cabinets or other above ground furniture in the public right-of-way, provided, however, that the size of the boxes on the pole shall be minimized to the satisfaction of the Director of Public Works and that the power supply equipment is underground;
- c. Attached to existing power source in an existing utility box;
- d. Enclosed at the base of the pole on which the antenna(s) is/are proposed for installation;
- e. In an existing ground-mounted (grade-level) equipment cabinet, with no expansion or additional cabinets to be added;
- f. Within a new equipment enclosure mounted at grade.

**1. Site location preferences:**

- a. Within the public right-of-way, not in a center median, and not requiring the removal of existing parkway trees, reduction of the size of any parkway landscape planters, and not requiring any

modifications to the existing location of any infrastructure within the public right-of-way;

- b. Within the parkway landscaping within the public right-of-way, and requiring only minor alterations to the existing parkway landscaping (including planter size) and/or infrastructure;
- c. Within the public right-of-way in a manner that requires significant alteration to the existing public improvements and/or infrastructure.

2. Site location restrictions. In addition to the orders of preference specified in the preceding subsections, the following location prohibitions shall be applicable to all applications for installations of wireless telecommunications facilities in the public rights-of-way.

- a. All wireless telecommunication facility antennas, equipment and related infrastructure shall be prohibited in all center street medians;
- b. In Residential Zoning Districts or Residential Planned Development Districts, only one (1) wireless telecommunications facility and associated equipment per applicant (including contractors, subcontractors, agents, or lessors to applicant or applicant's affiliate) shall be permitted within the public right-of-way within a five hundred foot (500') radius. For all other applicants, only one (1) wireless telecommunications facility and associated equipment per applicant shall be permitted within the public right-of-way within a one hundred foot (100') radius. The separation requirements in the preceding two sentences may be waived by the Director of Public Works upon a demonstration that the refusal to allow an additional facility within a five hundred foot (500') or one hundred foot (100') radius will result in the creation of a significant coverage gap for the applicant and/or that such refusal will otherwise violate an applicable state or federal law;
- c. Wireless on strand or overhead lines shall be prohibited;
- d. New wood poles and strand mounts may be allowed by the Director of Public Works if the applicant demonstrates that a wooden pole or strand mount is less impactful (from public safety, visual, or logistic standpoints) at a specific location.

**D. Height:**

- 1. Antenna installations on existing City infrastructure shall not exceed the height of the existing infrastructure piece by more than five and one-half feet (5.5') unless approved by the City Engineer or Director of Public Works after a finding is made that a greater height would promote the aesthetic or safety concerns of the City;

2. For antenna(s) proposed for placement on a new pole in the public right-of-way, the height to the top of the highest element shall not exceed the average height of utility poles on the same block as the subject site by more than five and one-half feet (5.5'). In cases of uncertainty, the Director of Public Works shall have the authority to determine the applicable height limit;
3. Pole-mounted equipment shall be a minimum of ten feet (10') above level of sidewalk for public safety reasons.

E. Design:

1. Any pole to be installed in the public right-of-way shall be disguised to resemble a utility pole to the maximum extent possible. All antennas shall be limited to a diameter no more than the widest part of the main pole, excluding its base. All antennas and screening devices shall be painted or finished to match the pole. All pole or equipment shall be painted or otherwise coated, per City standard, to be visually compatible with existing poles and equipment. The installation of new wood poles is not preferred;
2. Omnidirectional antenna units and groups of panel antennas shall be placed on the same vertical axis as the center of the pole where feasible. If not feasible, the installation shall utilize brackets and/or cross-arms that allow no more than a six-inch (6") extension (stand-off) from the pole except when additional stand-off is required to comply with health and safety regulations such as GO-95 and OSHA;
3. Antenna installations on existing City infrastructure shall be placed in a manner so that the size, appearance and function of the final installation is essentially identical to the installation prior to the antenna installation taking place;
4. No faux or otherwise nonfunctioning street lights, decorative elements, signs, clock towers, or artificial trees or shrubs or other such nonfunctioning screening elements made to resemble other objects shall be permitted;
5. Wireless telecommunications facility equipment located above the surface grade in the public right-of-way including, but not limited to those on certain street lights, shall consist of small equipment components that are compatible in structure, scale, function and proportion to the poles they are mounted on. Equipment shall be painted or otherwise coated, per City standard (which may include public art), to be visually compatible with the subject pole. Underground vaults shall employ flush-to-grade access portals and vents that are heel shoe safe and slip safe; provided, however, that this restriction shall not apply in flood prone areas. Installations on City-owned or controlled public facilities shall be subject to applicable fees as approved by the City Council;

6. Facilities shall be designed to be as visually unobtrusive as possible. Applicant shall size antennas, cabinet equipment and other facilities to minimize visual clutter. Facilities shall be sited to avoid or minimize obstruction of views from public vantage points and otherwise minimize the negative aesthetic impacts of the public right-of-way;
7. All cables and conduits shall be routed through the interior of the subject pole; provided, however, that for wood poles all cables and conduits shall be mounted and routed in a manner calculated to minimize their visibility;
8. All cables shall be screened from public view.

F. Local coastal program requirements. New Wireless Telecommunications Facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP).

G. Coastal permit required. The necessary Coastal Development Permit or Local Coastal Development Permit shall be obtained.

**Modification 14:**

Section 21.56.1450.C

Modifications to Wireless Telecommunications Facilities. Any modification to a Wireless Telecommunications Facility or co-location facility, including but not limited to, replacement of antennas, installation of additional antennas, installation of additional equipment cabinets, installation of a backup generator, paint or camouflage changes, and other physical changes to the facility, shall require, at a minimum, an administrative approval, and, if necessary, a building permit from the Department of Development Services. Prior to issuance of any approval for modification, the applicant shall submit an application for an administrative review to determine the compliance of the proposed modification with this Chapter and the existing Conditional Use Permit or other entitlement. For sites not ~~subject to Section 21.56.130~~ **Chapter 15.34** (located in the public right-of-way), applications for modification will be subject to the standards and procedures set forth for new Wireless Telecommunications Facilities, as specified in Sections 21.56.030 through 21.56.060, if any of the following apply[...]