



## Staff Report

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File #: REPORT 23-0496, Version: 1

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### Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of September 12, 2023

#### **INTRODUCTION OF AN ORDINANCE AMENDING TITLE 17 OF THE HERMOSA BEACH MUNICIPAL CODE RELATED TO CANNABIS DELIVERY AND APPROVAL OF RESOLUTIONS ESTABLISHING APPLICATION FEES, FINES, AND TAXES**

(Deputy City Manager Angela Crespi)  
(Community Development Director Carrie Tai)

#### **Recommended Action:**

Staff recommends City Council:

1. Introduce by title only and waive first reading of an ordinance of the City of Hermosa Beach, California, amending portions of Title 17 of the Hermosa Beach Municipal Code relating to mobile cannabis dispensaries (delivery) (**Attachment 1**);
2. Adopt a resolution amending the City's Master Fee Schedule to establish a Cannabis Delivery Permit application fee and establishing the rate of fine(s) for an administrative citation under Hermosa Beach Municipal Code Section 1.10.040 related to cannabis delivery (**Attachment 4**);
3. Adopt a resolution establishing a Cannabis Business Tax rate in accordance with Hermosa Beach Municipal Code Section 3.44 (**Attachment 5**); and
4. Find that all of the above actions are exempt from the California Environmental Quality Act (CEQA).

#### **Executive Summary:**

At its September 13, 2022 meeting, City Council adopted an ordinance to add Chapter 5.80 to the Hermosa Beach Municipal Code (HBMC), to allow cannabis delivery into the City from businesses located outside the City. Since that time, staff identified regulations related to commercial cannabis activities and cannabis delivery in HBMC Title 17 and Chapter 5.80 respectively, which conflict with one another. At its July 18, 2023 meeting, the Planning Commission adopted Resolution 23-09, recommending City Council adopt an ordinance outlining the recommended changes to Title 17 to resolve such conflicts.

With this item, staff will also present a resolution amending the Master Fee Schedule to establish a Cannabis Delivery Permit application fee and establishing the rate of fine(s) for an administrative citation under HBMC Section 1.10.040 and a resolution establishing a Cannabis Business Tax in accordance with HBMC Section 3.44.

**Background:**

**State and City Law Governing Medical Cannabis**

In 1996, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act, the intent of which was to enable persons who are in need of medical marijuana to use it without fear of prosecution under limited, specified circumstances.

In 2004, the Legislature enacted Senate Bill 420 (referred to as the Medical Marijuana Program) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who cultivate marijuana with a limited defense to certain specified State criminal statutes. Assembly Bills 2650 (2010) and 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

In 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, the California Supreme Court held that “[n]othing in the [Compassionate Use Act] or the [Medical Marijuana Program] expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land....” Additionally, in *Maral v. City of Live Oak*, the Court of Appeal affirmed the ability of local government entities to prohibit the cultivation of marijuana under its land-use authority, holding that “there is no right - and certainly no constitutional right - to cultivate medical marijuana....”

On October 9, 2015, Governor Brown signed three bills into law-Assembly Bills 266 and 243, and Senate Bill 643-collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”). Prior to the passage of the MMRSA, State law provided no legal mechanism for commercial cultivation of marijuana for medicinal purposes and Federal law prohibited all cultivation of marijuana. Until the MMRSA was passed, cultivation of marijuana for medicinal purposes in California was restricted to individual qualified patients or their primary care givers for non-commercial purposes and limited to personal quantities. The MMRSA became effective on January 1, 2016 and contained provisions to govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients. The MMRSA also contained statutory provisions that:

- Set up a “dual licensing” scheme which requires dispensaries and cultivators to obtain a local license prior to requesting and obtaining a license from the State; no dispensary or cultivation activity may lawfully operate without both a State and local license;
- Allow the City to completely prohibit the delivery of marijuana by requiring a local government that wishes to prevent marijuana delivery activity from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (see Business & Professions Code § 19340(a));

- Preserves the ability of a qualified patient and/or primary caregiver to cultivate for personal, non-commercial purposes, sets new limits on such cultivation, and excepts such personal cultivation from State cultivation licensing requirements. Furthermore, the MMRSA allows local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program for the cultivation of marijuana (see Health & Safety Code § 11362.777(c)(4));
- Expressly provide that the MMRSA does not supersede or limit local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (see Bus. & Prof. Code § 19315(a)); and
- Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to local governments' right to make and enforce within its limits all police regulations not in conflict with general laws (see Bus. & Prof. Code § 19316(c)).

The MMRSA, however, also stated that if a city or county had not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medicinal purposes, the State would become the sole authority to issue cultivation licenses in that jurisdiction, meaning no local license would be required.

At its March 8, 2016 meeting, City Council adopted Ordinance 16-1362 amending sections 17.42.110 and 17.26.030 of the HBMC to expressly prohibit all commercial medical marijuana uses in the City, cannabis deliveries to any location within the City, and prohibit cultivation for medical use by a qualified patient or primary caregiver. This ordinance codified the long-standing rule that since cannabis uses were not listed as a permitted use in the HBMC, medical marijuana uses were not permitted in the City.

In 2022, the Legislature passed, and Governor Gavin Newsom signed into law, Senate Bill 1186, known as the Medicinal Cannabis Patients' Right of Access Act. Beginning January 1, 2024, the newly enacted legislation prevents a city from adopting or enforcing any regulation that directly or indirectly prohibits "retail sale by delivery" of medicinal cannabis to patients or caregivers in the city. This includes any regulation that has the effect of prohibiting patients within the city or their caregivers from purchasing, by delivery, sufficient medicinal cannabis to meet their demands in a timely and readily accessible manner.

The new law does not prevent the City from adopting or enforcing reasonable regulations on retail delivery of medicinal cannabis including public safety requirements, licensing requirements, imposing or collecting taxes, or regulations consistent with state law or regulations issued by the California Department of Cannabis Control.

### State and City Law Governing Recreational Cannabis

On November 8, 2016, Proposition 64 was adopted for adult use of marijuana act (AUMA). In addition to other items, AUMA regulated the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age. Ultimately, AUMA expanded the permissions under MMRSA. Proposition 64 retains the local control that was clarified by the courts whereby cities can determine whether to allow or prohibit commercial cannabis activity in its jurisdiction and under what terms those uses would be permitted. Cities throughout California rushed to adopt local ordinances by January 1, 2018. Without a local ordinance specifying what activities were permitted or prohibited, a valid State license would be the only requirement to open and operate any commercial marijuana business in any commercial zone in the City.

At its November 28, 2017 meeting, the City Council adopted Ordinance 17-1380 amending Title 17 of the HBMC to expressly prohibit all commercial cannabis activities in the City and prohibit outdoor cannabis cultivation for personal use. A person may cultivate no more than six living cannabis plants inside a private residence in accordance with Health and Safety Code Section 11362.2.

Current State law allows qualified patients and their caregivers to cultivate and possess cannabis for personal use in order to treat certain medical conditions. It also allows the personal possession and use of recreational cannabis. However, cities retain their authority to reasonably regulate the business of cultivating, processing, and selling cannabis and related products. HBMC Chapter 5.80 allows recreational cannabis delivery into the City from businesses located outside the City.

### State and City Law Governing Cannabis Delivery

The Bureau of Cannabis Control (now the Department of Cannabis Control) adopted California Code of Regulations, title 16, section 5416, subdivision (d), allowing delivery statewide. Regulation 5416 (d) can arguably be interpreted to mean that delivery of cannabis goods is authorized in any city within California, regardless of whether the city regulates or bans deliveries within its borders. Most recently, the litigation challenging this regulation as violative of AUMA was dismissed as not ripe for adjudication because the court found the Bureau's regulation did not conflict with a city's right to control or ban delivery. Delivery and transport of commercial cannabis remains an open issue yet to be fully resolved by the legislature or the courts.

A local jurisdiction cannot ban transport of cannabis on public roads. However, delivery of cannabis must comply with local law. Accordingly, the most consensus position on this issue among cities (and that put out by the League of California Cities City Attorney's Department Cannabis Regulation Committee) is that cities may ban or regulate deliveries within their borders. However, cities cannot prevent a delivery service from using public roads to pass through its jurisdiction.

Senate Bill 1186, Medicinal Cannabis Patients' Right of Access Act, as previously described prevents a city from adopting or enforcing any regulation that directly or indirectly prohibits "retail sale by

delivery” of medicinal cannabis to patients or caregivers in the city.

### Recent Local Cannabis Discussions and Decisions

On November 17, 2021, the Hermosa Beach City Clerk received a petition from the cannabis industry for the purposes of adopting an initiative that would repeal Hermosa Beach’s existing ban on all commercial cannabis business operations and allow commercial cannabis operations in the City. The initiative measure does not include a tax on cannabis. At City Council’s regular meeting on November 23, 2021, Mayor Detoy requested, and a unanimous vote of the City Council supported, directing staff to place on the next regular session agenda an item addressing the City’s options.

At its December 14, 2021 meeting, City Council directed the City Manager to form an Advisory Group to explore policy issues and provide City Council with input on whether the City’s current ban on cannabis business operations should be modified. The group held a total of six public meetings and at its sixth and final meeting on March 29, 2022, the Cannabis Advisory Group participated in a final voting process regarding its support of key policy issues and options of the City Council.

A majority of the group indicated that they felt there is currently adequate access to legal cannabis. When asked if Hermosa Beach should lift the ban on cannabis delivery, a majority of the group indicated yes, but did not support that delivery being based within the City. The group’s final report and recommendations were presented to the City Council at its April 12, 2022 meeting.

At its March 22, 2022 meeting, the City Clerk reported to the Council that the initiative petition had acquired sufficient signatures to qualify for the ballot. The City Council opted not to adopt the initiative by ordinance but as required by law, to instead submit the ordinance, without alteration, to the voters in the November 8, 2022 Municipal Election.

At its May 24, 2022 meeting, City Council voted to oppose the industry-sponsored initiative. Council also directed staff to bring to Council for its consideration an ordinance allowing delivery of cannabis from outside the City and a measure that would impose a tax on cannabis businesses, should they be permitted in the City. State law requires any new local taxes to be approved by the voters (Proposition 218).

At its July 26, 2022 meeting, City Council adopted a resolution calling for the placement of a measure on the ballot for the November 8, 2022 General Municipal Election for the submission to the qualified voters of an ordinance adding Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing local business tax on cannabis businesses operating within the City of Hermosa Beach up to \$20.00 per square foot for cultivation and up to 10 percent of gross receipts for all other cannabis businesses should the industry-sponsored initiative pass or the Council allow delivery at any time in the future. Measure T was later approved by the voters in the November 8, 2022 General Municipal Election.

At its August 9, 2022 meeting, City Council introduced and waived first reading of an Ordinance of

the City of Hermosa Beach, California, adding Chapter 5.80 of the Hermosa Beach Municipal Code relating to cannabis delivery into the City and amending Section 1.10.040 to add that violations of Chapter 5.80 are subject to administrative penalty procedures.

At its September 13, 2022 meeting, City Council adopted Ordinance No. 22-1449 of the City of Hermosa Beach, California, adding Chapter 5.80 of the Hermosa Beach Municipal Code. Chapter 5.80 allows cannabis delivery as generally described below:

- Each cannabis delivery permit holder must comply with all applicable State and local laws and regulations as amended;
- Delivery activities are limited to operators with physical locations outside of the City and may take place only between the hours of 8:00 a.m. and 10:00 p.m.;
- Entities must be licensed and conform to all relevant legal standards and impose operational requirements to ensure health, safety, and welfare; and
- Entities must apply for, and be granted, a cannabis delivery use permit subject to standards that eliminate or minimize to the extent possible any associated impacts.

Under the terms of the ordinance, the City Manager is authorized to establish any additional rules, regulations, and standards governing the issuance, denial, or renewal of cannabis delivery permits, the ongoing operations of a cannabis delivery permit holder and the City’s oversight, or concerning any other subject determined necessary. Any decision by the City Manager could be appealed to the City Council and any violation is subject to administrative penalty procedures as outlined in HBMC Section 1.10.040. The current California Department of Cannabis Control Delivery Regulations are included as **Attachment 7**.

At its July 18, 2023 meeting, the Planning Commission adopted Resolution 23-09, recommending City Council approve an ordinance amending portions of HBMC Title 17, Zoning Code, to remedy identified conflicts with Chapter 5.80 allowing cannabis delivery by operators with physical locations outside City limits (**Attachment 3**).

At its August 8, 2023 Regular meeting, City Council continued this item to its September 12, 2023 City Council meeting.

**Past Board, Commission, and Council Actions**

Meeting Date	Description
March 8, 2016 (Regular Meeting)	City Council adopted Ordinance 1 Code (HBMC) to expressly prohibit medical use by a qualified patient
November 28, 2017 (Regular Meeting)	City Council adopted Ordinance 1 activities in the City and prohibit o

November 23, 2021 (Regular Meeting)	Under Future Agenda Items, May 2021 agenda an item addressing request was supported by a unan
December 14, 2021 (Regular Meeting)	City Council directed the City Mar provide City Council with input on
March 22, 2022 (Regular Meeting)	City Council opted not to adopt th alteration, to the voters in the Nov
April 12, 2022 (Regular Meeting)	City Council received and discuss
May 24, 2022 (Regular Meeting)	City Council action to oppose the Council also directed staff to bring the City and a measure that would
July 26, 2022 (Regular Meeting)	City Council adopted a resolution Municipal Election for the submiss Finance) of the Hermosa Beach M Hermosa Beach should the initiati
August 9, 2022 (Regular Meeting)	City Council introduced and waive Chapter 5.80 of the Hermosa Bea 1.10.040 to add that violations of
September 13, 2022 (Regular Meeting)	City Council adopted an ordinance locations outside of the City and to administrative penalty procedures
July 18, 2023 (Regular Meeting)	Planning Commission adopted Re HBMC Title 17, Zoning Code, to r with physical locations outside Cit
August 8, 2023 (Regular Meeting)	Item was continued to September

**Discussion:**

The City of Hermosa Beach currently permits cannabis delivery in the City by operators with physical locations located outside of the City, subject to the issuance of a cannabis delivery permit and the requirements of HBMC Chapter 5.80. Staff presents this item to finalize three elements of the cannabis delivery permit program including resolving minor conflicts between HBMC Title 17 and Chapter 5.80, establishing a permit application fee, setting a rate of fine(s) for an administrative citation, and establishing a local tax rate within the maximum rate set by the voters.

Title 17 Zoning Code Update

Prior to the adoption of HBMC Chapter 5.80, the City of Hermosa Beach prohibited all commercial cannabis activity in the City, including the delivery of cannabis from outside the City. Regulations related to this prohibition were included in several locations including Title 17, referred to as the Zoning Code. The adoption of the new chapter allowing cannabis businesses outside the City to

deliver within City limits triggered the need to amend preexisting land use classifications within the City's Zoning Code.

Staff prepared a zone text amendment for Sections 17.04.050 regarding commercial land use definitions, 17.08.020 regarding permitted uses in the R-1 Single-Family Residential Zone, 17.18.020 regarding permitted uses in the MHP Mobile Home Park Zone, 17.26.030 regarding permitted uses in the C-1, C-2, and C-3 Commercial Zones, and 17.28.020 regarding permitted uses in the M-1 Light Manufacturing Zone. At its July 18, 2023 meeting, the Planning Commission conducted a public hearing and adopted Resolution PC 23-09 (**Attachment 3**) recommending City Council approve an ordinance amending portions of Title 17 of the Hermosa Beach Municipal Code relating to mobile cannabis dispensaries (delivery) (**Attachment 1**).

Proposed amendments are shown below as indicated with redlined text.

➤ HBMC Section 17.04.050

“Commercial Cannabis Activity” is amended as follows:

Commercial cannabis activity means cultivation, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, packaging, delivery, or sale of cannabis or cannabis products for medical and nonmedical use or any other purpose and includes the activities of any business licensed by the state or other government entity under Division 10 of the California Business and Professions Code, or any provision of state law that regulates the licensing of cannabis businesses. This definition also includes ~~mobile cannabis dispensary~~ and a medical marijuana dispensary. **This definition excludes mobile cannabis dispensaries.**

“Mobile Cannabis Dispensaries” is amended as follows:

Mobile cannabis dispensaries means any dispensary, clinic, cooperative, association, club, business or group which transports or delivers, or arranges the transportation or delivery of, cannabis to a person **in the City. This definition includes businesses engaged in Cannabis delivery.**

Title 17 provides definitions for commercial land uses regarding cannabis activities. The definitions provide a framework for regulations outlined in other sections of Title 17. Title 17 currently uses “Commercial Cannabis Activity” as an umbrella term to generally prohibit any land use that is similarly defined.

Both Mobile Cannabis Dispensaries and Cannabis Delivery regulate businesses that deliver or arrange delivery of cannabis, but neither use is excluded from the general prohibition of Commercial Cannabis Activities, as described by HBMC 17.42.110. Chapter 5.80 currently allows businesses



engaging in Cannabis Delivery to obtain a business license, as long as the physical business location is outside of Hermosa Beach City limits.

The proposed amendments seek to clarify Mobile Cannabis Dispensaries are a subcategory of businesses classified as Commercial Cannabis Activities. The subcategory is to delineate businesses with physical locations within the City, from businesses with physical locations outside of City limits. The proposed amendment is an efficient way of bridging regulations within both Chapter 5.80 and Title 17, with minimal alterations to both sections.

➤ HBMC Section 17.08.020 Permitted Uses

R-1 Zone permitted uses is amended to allow “**Mobile Cannabis Dispensaries**,” consistent with the requirements set forth by HBMC 17.42.110:

**P. Mobile Cannabis Dispensaries**

➤ HBMC Section 17.18.020 Permitted Uses

MHP Zone permitted uses is amended to allow “**Mobile Cannabis Dispensaries**,” consistent with the requirements set forth by HBMC 17.42.110:

**C. Mobile Cannabis Dispensaries**

➤ 17.26.030 C-1, C-2 and C-3 Permitted Uses

The land use regulations table is amended to replace “Cannabis Delivery” with “**Mobile Cannabis Dispensaries**” and to allow “Mobile Cannabis Dispensaries”, consistent with the requirements set forth by HBMC 17.42.110, in all commercial zones:

<del>Cannabis delivery</del> <b><u>Mobile Cannabis Dispensaries</u></b>	<u>P</u>	<u>P</u>	<u>P</u>	17.42.110
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➤ 17.28.020 M-1 Permitted Uses

The land use regulations table is amended to allow “**Mobile Cannabis Dispensaries**,” consistent with the requirements set forth by HBMC 17.42.110:

<b><u>Mobile Cannabis Dispensaries</u></b>	<u>P</u>	<u>17.42.110</u>
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Consistent with Chapter 5.80, the proposed amendments include Mobile Cannabis Dispensaries as a permitted use in all zones, excluding the O-S Open Space Zone. This would allow businesses to

arrange delivery to any private person in the City.

➤ HBMC Section 17.42.110(A)

17.42.110 Commercial Cannabis Activities and Cannabis Cultivation Prohibition

The purpose of this section is to expressly prohibit the establishment of ***certain*** commercial cannabis uses in the City. The City Council finds that ***certain*** prohibitions on commercial cannabis activity are necessary for the preservation and protection of the public health, safety and welfare of the city. The prohibition of such uses is within the authority conferred upon the city council by state law and is an exercise of its police powers to enact and enforce regulations for the public health, safety and welfare of the City. Nothing in this chapter shall be interpreted to conflict with state law, including without limitation the Compassionate Use Act, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA) and the MAUCRSA, as may be amended. Nothing in this section is intended to prohibit a primary caregiver from providing medical cannabis to a qualified patient as those terms are defined by state law.

Existing regulations currently exclude all commercial cannabis uses in the City, which is inconsistent with section 5.80.010. Staff proposes to add “Mobile Cannabis Dispensaries” as a permitted use to achieve the intent of Chapter 5.80.

➤ HBMC Section 17.42.110(B)

***“Except as provided in this chapter, Commercial cannabis activities of all types are expressly prohibited in all zones in the city. No person shall establish, operate, conduct, or allow a dispensary or commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any other provision of this Code, this prohibition shall control.”***

Existing regulations currently exclude all commercial cannabis activities in all City zones. Staff proposes to provide standards for which commercial cannabis uses may be permitted, consistent with section 5.80.010.

➤ HBMC Section 17.42.110(C)

“A property owner shall not rent, lease, or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the City. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the City.”

This provision exists currently and is only proposed to be reordered.

➤ HBMC Section 17.42.110(D)

“No person or entity may cultivate cannabis at any location in the City, except:

1. A person may cultivate no more than six (6) living cannabis plants inside a private residence in accordance with Health and Safety Code Section 11362.2; and
2. Where the City is preempted by federal or state law from enacting a prohibition on such cultivation.”

This provision exists currently and is only proposed to be reordered.

➤ HBMC Section 17.42.110(E)

**Mobile Cannabis Dispensaries**

**1. Businesses with physical locations solely outside City limits are permitted to engage in cannabis delivery within City limits provided the business is in compliance with Chapter 5.80 and all other applicable State and local law.**

Subsection E provides guidelines consistent with Chapter 5.80 in which cannabis delivery is allowed. Staff recommends City Council adopt the above subsection, to provide clear outlines for applicability, and to bridge regulations between Title 17 and Chapter 5.80.

➤ HBMC Section 17.42.110(F)

Violations and Remedies.

1. Criminal Penalties. Any violation of any provision of this chapter shall be deemed a misdemeanor and shall be punishable in accordance with Chapter 1.04.
2. Any use or condition caused, or permitted to exist, in violation of any provision of this section shall be, and hereby is declared to be, a public nuisance and may be abated by the city pursuant to Code of Civil Procedure Section 731 and Chapter 8.28 and any other remedy available by law to the city. (Ord. 17-1380 §2, 2017: Ord. 16-1362 §1, 2016: Ord. 08-1292 §2, 2008)

This provision exists currently and is only proposed to be reordered.

Cannabis Delivery Permit Application Fee and Administrative Fine(s)

The Hermosa Beach Municipal Code Chapter 5.80, governing cannabis delivery activities within the City, establishes a requirement to obtain a cannabis delivery permit. It further outlines that an application shall be accompanied by an application fee adopted by resolution of the City Council. It is staff’s intent to ensure that the cannabis permit application fee represents full cost recovery of providing the application review service.

As was completed to establish other service fees included in the City’s Master Fee Schedule, staff considered the fully burdened hourly rates for City personnel directly involved in providing the application review. The fully burdened hourly rates were then applied to staff review time estimates to arrive at the recommended fee. Based on the personnel, and the estimated amount of time involved

in the application review, staff recommends Council approve a resolution setting the cannabis permit application fee at \$702. Since this is a new application and new fee, staff would review the fee and make any necessary adjustments as part of the City's next fee study.

In addition to the permit application fee, staff recommends Council establish a rate of fine(s) for an administrative citation under Hermosa Beach Municipal Code Section 1.10.040 related to cannabis delivery. As a penalty designed to encourage and obtain compliance, fines are not based on cost recovery but rather set at an amount that would deter non-compliant activities. Staff recommends City Council establish an administrative penalty amount of \$20,000 for each day that the unpermitted activity occurs and that each day or occurrence be considered a separate and distinct offense. To encourage legalization of delivery activities occurring within the City, staff recommends granting the City Manager the option to grant forgiveness of a first-time offense if the business operator submits a complete application for a cannabis delivery permit.

The City of Los Angeles Municipal Code similarly includes a penalty of \$20,000 per occurrence for unlicensed commercial cannabis activity, while the County of Los Angeles has set its administrative penalty at \$30,000 per occurrence. Precedence for penalties at the recommended level was also set by legislation aimed at controlling unlawful cannabis related activities at the state and local levels. Assembly Bill 1138, passed in 2021, includes a \$30,000 penalty for abetting unlicensed commercial cannabis activity and Assembly Bill 141 Budget Act of 2021 includes a \$30,000 per occurrence fine for violating Licensure regulations of the California Department of Cannabis Control.

Staff recommends City Council adopt a resolution amending the City's Master Fee Schedule to establish a \$702 Cannabis Delivery Permit application fee and establishing the rate of fine(s) for an administrative citation under Hermosa Beach Municipal Code Section 1.10.040 related to cannabis delivery at \$20,000 per occurrence with the ability to waive a first-time offense if a true and complete application for a lawful permit is made (**Attachment 4**).

### Cannabis Business Tax

Following the passage of Measure T in the November 8, 2022 General Municipal Election, Chapter 3.44 was added to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code. The voter approved ordinance established a local business tax on cannabis businesses operating within the City of Hermosa Beach up to \$20.00 per square foot for cultivation and up to 10 percent of gross receipts for all other cannabis businesses. The maximum rates outlined in HBMC Chapter 3.44 may be adjusted by the City Council by ordinance or resolution, subject to the maximum rates set by the voters.

As a business activity that the City intends to legalize, staff recommends setting the local tax rate at a reasonably low level to encourage business operators to seek a cannabis delivery permit and begin to pay taxes on its gross sales. A lower tax rate may also ensure that the cost to consumers to

purchase from a legally permitted entity is not so significantly higher that it would discourage the community from shopping legally.

In addition to local tax, cannabis retailers are now responsible for reporting and paying the cannabis excise tax to the California Department of Tax and Fee Administration (CDTFA) for retail sales of cannabis or cannabis products. This new tax change results in a compounding of State and local taxes on each transaction. For example, a \$35.00 product purchase with a \$5.00 delivery fee at the maximum local tax rate of 10 percent, cannabis excise tax rate of 15 percent, and a sales tax rate of 8.5 percent would result in a 27 percent overall tax rate for a total final amount due for the purchase of \$54.28.

The following table provides local tax rates in other cities as they relate to cannabis business activities:

Local Jurisdiction	Commercial Cannabis Tax Rate
City of Artesia	15.00%
City of Commerce	3.00%
City of Costa Mesa	6.00%
City of El Monte	2.00%
City of Huntington Beach	6.00%
City of Lancaster	5.00%
City of Malibu	3.00%
City of Maywood	10.00%
City of Montebello	2.5%
City of Pasadena	4.00%
City of Pomona	4.00%
City of San Luis Obispo	6.00%

Based on the review of other cities and the compounding of the City’s local tax with State Excise Tax and sales tax, staff recommends City Council adopt a resolution establishing the Hermosa Beach Cannabis Business Tax rate at five percent for the commencement of the program (**Attachment 5**). Should Council wish to modify the local tax rate in the future, the rate could be changed by resolution.

**General Plan Consistency:**

This report and associated recommendation have been evaluated for their consistency with the City’s General Plan. Relevant Policies are listed below:

*Governance Element*

**Goal 1. A high degree of transparency and integrity in the decision-making process.**

Policy:

- **1.1 Open Meetings.** Maintain the community's trust by holding meetings in which decisions are being made, that are open and available for all community members to attend, participate, or view remotely.

**Goal 2. The Community is active and engaged in decision-making processes.**

Policy:

- **2.3 Public participation guidelines.** Establish parameters and guidelines to ensure public participation is promoted through diverse methods.

**Fiscal Impact:**

Fiscal impacts associated with the issuance of cannabis delivery permits in the City would include permit application revenue to serve as cost recovery for the staff time for review and issuing or denying a cannabis delivery permit, revenue related to collection of any fines that may be issued for unlawful activities, and revenue related to cannabis business taxes collected on the gross sales of cannabis delivery activities.

Expenses related to the cannabis delivery program would include staff time to monitor the California Department of Cannabis Control's California Cannabis Track and Trace (CCTT) system, to monitor compliance with Cannabis Business Tax reporting and collection, and any enforcement activities that may be required to enforce the provisions of related regulations of the HBMC.

The exact amount of any of these revenue sources or expenses is currently unknown and unable to be projected at this time.

**Environmental Determination:**

The Zone Text Amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3). The activity is covered by the commonsense exemption that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Zone Text Amendment only modifies use classifications already present in the Municipal Code. The amendment would not approve any development project or create any new land use provisions that would allow new development, and therefore would not cause a significant effect on the environment.

The establishment of application fees and taxes for cannabis delivery businesses is statutorily exempt pursuant to Section 15273 of CEQA as it consists of rates and charges by public agencies for the purpose of meeting operating expenses.

**Public Notification:**

For the September 12, 2023 City Council public hearing, a legal ad was published on July 27, 2023 in the Easy Reader, a newspaper of general circulation. The item was continued from the August 8, 2023 Regular City Council meeting to a date certain, September 12, 2023. Public notification materials are included as **Attachment 6**.

**Attachments:**

1. Draft Ordinance
2. Redlined Text Amendments
3. Planning Commission Resolution 23-09
4. Draft Resolution-Application Fee and Fines
5. Draft Resolution-Cannabis Business Tax Rate
6. Public Notification
7. California Department of Cannabis Control Commercial Delivery Regulations
8. Link to March 8, 2016 City Council Staff Report
9. Link to November 28, 2017 City Council Staff Report
10. Link to November 23, 2021 City Council Agenda
11. Link to December 14, 2021 City Council Staff Report
12. Link to March 22, 2022 City Council Staff Report
13. Link to April 12, 2022 City Council Staff Report
14. Link to May 24, 2022 City Council Staff Report
15. Link to July 26, 2022 City Council Staff Report
16. Link to August 9, 2022 City Council Staff Report
17. Link to September 13, 2022 City Council Staff Report
18. Link to July 18, 2023 Planning Commission Staff Report
19. Link to August 8, 2023 City Council Staff Report

**Respectfully Submitted by:** Angela Crespi, Deputy City Manager

**Concur:** Johnathon Masi, Assistant Planner

**Concur:** Carrie Tai, AICP, Community Development Director

**Noted for Fiscal Impact:** Viki Copeland, Finance Director

**Legal Review:** Patrick Donegan, City Attorney

**Approved:** Suja Lowenthal, City Manager