

# COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

<b>AGENDA ITEM NO.:</b> C.1.	<b>SITE LOCATION:</b> Citywide
<b>HEARING DATE:</b> October 19, 2023	<b>GENERAL PLAN:</b> N/A
<b>CASE NO.:</b> Amendment No. A-038-2023	<b>ZONE:</b> N/A
<b>APPLICANT:</b> City of Garden Grove	<b>APN:</b> N/A
<b>OWNER:</b> N/A	<b>CEQA DETERMINATION:</b> Exempt: 15061(b)(3) – Common Sense; and 15301 – Existing Facilities

## **REQUEST:**

A City-initiated zoning text amendment to Title 9 (Land Use) of the Garden Grove Municipal Code pertaining to retail sale by delivery of medicinal cannabis [A-038-2023(A)] and development standards for mechanical equipment, maximum hardscape coverage within front yard setbacks, and substitute landscaping [A-038-2023(B)]. The proposed code amendment would update portions of Chapters 9.08, 9.12, 9.16, and 9.18 (Single-Family Residential Development Standards, Multifamily Residential Development Standards, Commercial, Office Professional, Industrial, and Open Space Development Standards, and Mixed Use Regulations and Development Standards, respectively) of Title 9 of the City of Garden Grove Municipal Code to specify standards for the screening of mechanical equipment within an exterior equipment enclosure in residential zones; to clarify how the maximum permitted hardscape coverage in the front yard setback in residential, commercial, industrial, and open space zones is calculated; and to update the standards for artificial turf in all zones. In addition, the proposed code amendment would amend existing provisions of Chapter 9.52 (Cannabis Activities) of Title 9 of the Garden Grove Municipal Code in a manner consistent with the recently enacted Medicinal Cannabis Patients’ Right of Access Act to permit the retail sale by delivery of medicinal cannabis in the City from licensed facilities located outside of the City, subject to specified regulations.

## **BACKGROUND:**

### **A-038-2023(A) - RETAIL SALE BY DELIVERY OF MEDICINAL CANNABIS**

On January 26, 2016, the City Council adopted Ordinance No. 2863, adding Chapter 9.52 "Cannabis Activities" to Title 9 of the Garden Grove Municipal Code. Chapter 9.52 prohibited the establishment, maintenance, or operation of marijuana dispensaries and related commercial cannabis activities, including the distribution, manufacture, cultivation and delivery of cannabis and/or cannabis products in all zoning districts, planned unit development districts, and specific plan areas in the City.

On November 8, 2016, California voters approved Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act – legalizing recreational marijuana use

for adults 21 or older. Although the measure legalized recreational use of marijuana, it allowed the City to continue to prohibit marijuana business activities, except that the City could not prohibit adults 21 years or older from cultivating up to six (6) living marijuana plants inside a private residence, or inside an accessory structure that is fully enclosed and securely located at that private residence. In 2017, the City adopted Ordinance No. 2882 approving Amendment No. A-017-2017 amending portions of Chapter 9.52 to conform the City's Land Use Code by incorporating the changes to State law regarding private cannabis cultivation. The ordinance affirmed continuation of the ban against marijuana business activities, but carved out the private cultivation exception so that the City's ban could conform to the new measure.

Senate Bill (SB) 1186 (Chapter 395, Statutes of 2022), known as the Medicinal Cannabis Patients' Right of Access Act, prohibits local jurisdictions, beginning January 1, 2024, from adopting or enforcing any regulation that prohibits, or has the effect of prohibiting, the retail sale by delivery within the jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction. SB 1186 permits local jurisdictions to adopt and enforce reasonable regulations on retail sale by delivery of medicinal cannabis, and does not limit or otherwise affect the ability of a local jurisdiction to adopt and enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.

To respond to SB 1186, the City is proposing to amend Chapter 9.52.020 (Cannabis Dispensaries and Delivery Prohibited) of Chapter 9.52 (Cannabis Activities) of Title 9 of the Garden Grove Municipal Code to permit the retail sale by delivery of medicinal cannabis in the City subject to specified regulations in compliance with recent State law changes.

#### A-038-2023(B) - FOCUSED ZONING AMENDMENT

The City's Code Enforcement team has long served as a tool for maintaining the image of the City, helping to resolve property maintenance issues across the City. The City Council identified Code Enforcement as a Tier 2 priority this fiscal year, and a related implementation item includes evaluation of the Garden Grove Municipal Code to promote positive property maintenance.

Code Enforcement has found that certain property maintenance issues continuously appear across a multitude of properties. Namely, Code Enforcement has identified three recurring problem areas: the appearance of exterior mechanical equipment (e.g., water heaters) attached to residential units, over-paving of front yards, and the improper installation of artificial turf. The intent of this proposed text Amendment is to make the Municipal Code easier for property owners to understand and implement, and easier for Code Enforcement to regulate.

Due to recent changes to State-required energy standards for residential units, many property owners are moving away from tankless water heaters, and installing heat-pump water heaters instead. Tankless heaters are typically wall-mounted, which

does not require any floor area for installation. The new heat-pump water heaters are substantially larger than tankless heaters, limiting the ability to locate them inside a residential unit. As a result, these new heat pumps are often installed on the exteriors of buildings. Manufacturers' specifications for this type of equipment typically includes requirements for the equipment to be located in a protective enclosure. Code Enforcement has received numerous complaints that the installation of equipment in enclosures to be unsightly.

With the proliferation of Accessory Dwelling Units (ADUs), and Senate Bill 9 (SB 9) units, which often do not require additional parking per State law, Code Enforcement has received an increase in complaints regulating parking both on- and off-street. Title 9 of the Garden Grove Municipal Code does not regulate on-street parking, only parking on private properties. In wanting to keep residential neighborhoods an attractive place to live, the Municipal Code requires a maximum of 50% hardscape within the front yard setback. As more property owners remove landscaping to add parking, Code Enforcement officers are finding more properties do not meet the minimum amount of landscape area, and that enforcing the maximum 50% hardscape area is becoming more challenging.

In an effort to keep landscape maintenance costs to a minimum, particularly water costs associated with irrigation, more property owners are installing artificial turf in lieu of live landscaping. The Municipal Code does allow artificial turf, as it is similar in appearance to live grass. Code Enforcement has encountered numerous artificial turf installations that do not abide by manufactures' requirements and/or specifications. Incorrectly installed turf can pose a hazard to passerby (e.g., tripping hazard), and can also prevent proper drainage during rainstorms. Incorrectly installed, and poorly maintained, artificial turf also does not mimic the appearance of live grass, counter to the intent of the Municipal Code.

While these problem areas are most prevalent in R-1 (Single-Family Residential) zoned properties, the Municipal Code has similar language across multiple zones. Revising the Municipal Code text across all zones will help make interpreting the Code simpler, and more readily implementable. This assists home owners to understand the City's property maintenance requirements, and helps streamline Code Enforcement procedures for these recurring issues.

## **DISCUSSION:**

### **A-038-2023(A) - RETAIL SALE BY DELIVERY OF MEDICINAL CANNABIS**

The proposed amendment will allow the City of Garden Grove to be in compliance with the provisions of SB 1186, which require cities to permit the retail sale by delivery of medicinal cannabis within their jurisdictions. The proposed amendment will also include additional reasonable regulations intended to continue to protect the public health, safety and welfare of the community.

The California Department of Cannabis Control regulates the sale and delivery of both adult use and medicinal cannabis and has adopted detailed regulations governing many aspects of cannabis delivery operations. A copy of the pertinent state

regulations pertaining to cannabis delivery can be found in [Attachment 1](#). The following is a summary of the state regulations:

- All deliveries of cannabis goods shall be performed by a delivery employee who is at least 21 years old and is directly employed by a licensed retailer.
- All deliveries of cannabis goods shall be made in person during specified hours of operation in which the delivery employee may not engage in any activities except for cannabis goods delivery and necessary rest, fuel, or vehicle repair stops.
- Delivery employees shall return to the licensed premises after making their last delivery of the day if they have any unsold cannabis goods to return to the premises.
- A delivery employee shall, during deliveries, carry a copy of the retailer's current license, a copy of the QR Code certificate issued by the Department of Cannabis Control, the employee's government-issued identification, and an identification badge provided by the employer.
- A delivery employee shall confirm the identity and age of the delivery customer.
- An unlicensed third party, intermediary business, broker, or any other business or entity, may not be used to sell cannabis goods to a customer. However, a technology platform may be used to facilitate the sale and delivery of cannabis goods, subject to specific restrictions.
- A delivery employee may only deliver cannabis goods to a physical address in California.
- A delivery employee shall not deliver cannabis goods to an address located on publicly owned land or any address on land or in a building leased by a public agency, to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.
- A vehicle used in the delivery of cannabis goods shall not have any marking or other indications on the exterior that may indicate that cannabis goods are located within the vehicle and the cannabis goods shall not be visible to the public. Cannabis goods shall be stored in a secure, fully enclosed trunk that cannot be accessed from inside the vehicle, or in a secured area or compartment within the interior of the vehicle. Cannabis goods shall not be in an unattended motor vehicle unless the motor vehicle is locked and equipped with an active vehicle alarm system. The vehicle shall be outfitted with a dedicated Global

Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled.

- Upon request, a licensed retailer shall provide the vehicle's make, model, color, Vehicle Identification Number, license plate number and Department of Motor Vehicles registration information.
- Vehicles used to deliver cannabis goods may be stopped and inspected by the Department of Cannabis Control at any licensed premises or during delivery.
- A delivery employee may only carry cannabis goods in the delivery vehicle with a value not to exceed \$10,000 and for one licensed retailer only at any time.
- A delivery employee may only carry cannabis goods in the delivery vehicle and may only perform deliveries for one licensed retailer at a time.
- Before leaving the licensed premises, the delivery employee must have a delivery inventory ledger of all cannabis goods provided to the delivery employee. The inventory log must include all stops, and the log must be turned in to the licensed retailer when the delivery employee returns to the licensed premises.
- Prior to arrival at any delivery location, the licensed retailer must have received a delivery request from the customer and provided the delivery request receipt to the delivery employee electronically or in hard copy.
- If a delivery employee does not have any delivery requests to be performed for a 30-minute period, the delivery employee shall return to the licensed premises. Upon returning to the licensed premises, all undelivered cannabis goods shall be returned to the licensed retailer's inventory and recorded.
- Delivery employees shall not consume cannabis during deliveries.
- While making deliveries of cannabis goods, a licensed retailer's delivery employee shall only travel from the retailer's licensed premises to the delivery address, from one delivery address to another delivery address, or from a delivery address back to the retailer's licensed premises.

The City is proposing restrictions and requirements in addition to the provisions set forth by the Department of Cannabis Control. A summary of the reasonable regulations imposed by the City through the proposed amendment is as follows:

- Delivery of medicinal cannabis is allowed to medicinal cannabis patients or their primary caregivers by a medicinal cannabis business from a fixed location outside of the City only.
- Medicinal cannabis businesses engaging in the retail sale by delivery of medicinal cannabis within the City shall be subject to the following requirements:
  - Shall obtain and maintain a City of Garden Grove business tax certificate.
  - Shall maintain an active M-license (medicinal license) issued by the State of California and all applicable permits and/or licenses required by the local jurisdiction in which the business is located.
  - Shall comply with all applicable regulations of the California Department of Cannabis Control.
  - Shall not deliver adult-use cannabis, cannabis accessories, and/or branded merchandise.
  - Deliveries shall be performed by a delivery employee who is directly employed by the medicinal cannabis business.
  - Shall maintain an accurate list of its delivery employees and shall provide the list to the City upon request.
  - Delivery employees shall carry and immediately provide upon request by the City or any law enforcement officer the following: a copy of the current business tax certificate, a copy of the license issued by the State Department of Cannabis Control, a copy of the QR Code certificate issued by the State Department of Cannabis Control, the employee's government-issued identification; an identification badge, delivery inventory ledgers, all delivery receipts for cannabis goods carried in the delivery vehicle, or any deliveries that have already been made to customers, and a log of all stops from the time the employee left the employer's premises.
  - Shall not carry cannabis goods valued in excess of \$5,000 in the delivery vehicle.
  - Shall deliver to a physical address that is not located on publicly owned land, on land or in a building leased by a public agency, a school providing instruction in kindergarten or any grades one through twelve, a day care center, or a youth center.
  - Shall only deliver to individuals who are at least 18 years of age and possesses a valid physician's recommendation and identification.

- Shall maintain a list of all vehicles, including vehicles' make, model, year, color, license plate number, vehicle identification number (VIN), and Department of Motor Vehicles registration information, along with proof of current automobile liability insurance.
- Shall utilize delivery vehicles that are unmarked.
- Shall deliver using a vehicle that is outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee.

The exact proposed changes to the Municipal Code are shown in the draft City Council Ordinance (Exhibit "A") that is attached to the proposed Planning Commission Resolution No. 6071-23.

#### A-038-2023(B) - FOCUSED ZONING AMENDMENT

The following discussion summarizes the proposed amendments to the Municipal Code. These proposed revisions to the existing standards and regulations are intended to maintain the positive character of the City's residential, commercial, and mixed use areas in support of the City Council's identification of Code Enforcement as a Tier 2 priority. The specific language is intended to simplify the Code, making it easier for property owners to comply with, and for Code Enforcement officers to enforce. The proposed changes to the Municipal Code are found in the draft City Council Ordinance (Exhibit "A") that is attached to the proposed Planning Commission Resolution No. 6072-23.

There are four updates to Title 9 of the Municipal Code under this Amendment. Collectively, the four areas of update will affect all zoning designations of the Municipal Code. The areas that will be updated are as follows: (1) updating the General Requirements in all three residential (R-1, R-2, and R-3) zones, (2) revising the maximum front yard hardscape percentage in all residential (R-1, R-2, and R-3) zones, (3) updating the language pertaining to the maximum front yard hardscape percentage in the landscaping requirements for all three residential (R-1, R-2, and R-3) and the commercial zones (C-1, C-2, C-3, O-P, O-S, M-1, M-P) zones, and (4) and adding language pertaining to the installation of artificial turf in all zones.

#### General Requirements:

Currently, the Municipal Code provides general requirements pertaining to the installation of mechanical equipment and metering equipment in residential zones. The proposed Amendment would address said requirements in Section 9.08.040.010 (Single-Family Residential – General Requirements) of Chapter 9.08 (Single-Family Residential Development Standards), and Section 9.12.040.010 (Multifamily Residential – General Requirements) of Chapter 9.12 (Multifamily Residential Development Standards).

The proposed Amendment would add additional language to address exterior enclosures that may be required for exterior equipment. Currently, the Municipal Code does not explicitly address equipment enclosures. The Amendment specifically allows for equipment enclosures, as required by manufacturer specifications, and requires said enclosures to be painted to match the color of the existing house. The intent is to create a more uniform look in residential zoned properties. It would also more closely match the requirements for commercial and mixed-use zone properties, which require all equipment to be screened from view, or placed in equipment enclosures.

While changes to State energy standards may necessitate the location of more efficient equipment on the exterior of residential units, the proposed Amendment would help improve their aesthetic appeal. The proposed language adds objective design standards that help shield mechanical equipment enclosures from being readily viewed from the public right-of-way, or adjacent properties. Requiring enclosures, and their attachments and/or appurtenances, to be painted to match the house, can help disguise the equipment. Furthermore, requiring equipment enclosures to be painted to match the house is consistent with other City requirements for new construction or improvements to match existing buildings.

#### Residential – General Development Standards:

The Municipal Code regulates the maximum amount of hardscape that can be provided in the front yard setback for residential uses. The intent is to create a more attractive streetscape, maintaining a certain amount of landscaping in the front yard. In addition to the aesthetics, other benefits to limiting front yard hardscaping and requiring landscaping can include ensuring proper drainage of stormwater, energy savings, and ecological benefits. The proposed Amendment clarifies what land area counts toward the maximum hardscape percentage. Specifically, Section 9.08.040.020 (Residential – General Development Standards) of Chapter 9.08 (Single-Family Development Standards) and Section 9.12.040.020 (Residential – General Development Standards) of Chapter 9.12 (Multifamily Development Standards) are proposed to be revised.

With the proposed Amendment, the language defining the maximum front yard hardscaping will be altered. The specific language will now specify that driveways required for exterior parking, and the specific sizes for each driveway based on the size of the garage, are exempt from the maximum front yard hardscape requirements. The Municipal Code currently makes exceptions to the front yard landscape requirements for “standard driveway” areas that are required for parking. Whereas a “standard driveway” was not previously defined, this proposed Amendment adds specificity to how much driveway area can be exempted from the maximum hardscape percentage.

For multiple-family developments, where there is often a central driveway, the front yard hardscape percentage is limited to a maximum of 50%, exclusive of any driveway or walkway necessary to access the site. Chapter 9.12 (Multifamily Development Standards) will therefore not make any exceptions for driveway parking. This is consistent with the typical pattern of multifamily developments with a shared driveway, and no driveway parking.



In requiring a maximum 50% hardscape in the front yard setback, the Municipal Code exempts driveway parking from that requirement, as said parking is required in other sections of the Code. In the parking section of the Municipal Code, each garage requires a certain amount of driveway parking. For example, a two-car garage requires 400 square feet of driveway parking. Until the proposed Amendment, the Municipal Code has not specified the required driveway area, in terms of square feet, that can be exempted from the maximum hardscape percentage. The driveway area that can be exempted is the same size of the garage that the driveway is intended to lead to. Additionally, in some cases, properties can also have multiple driveways. The revised language also identifies the specific driveway location that can be exempted. Only those driveways that lead to a garage, or a legally converted garage, can be exempted from the maximum hardscape requirements.

#### Landscaping – General Provisions:

Similar to the aforementioned General Development Standards, the landscaping requirements of the Municipal Code also regulate the maximum amount of hardscape that can be provided in the front yard setback. The proposed Amendment simplifies the calculation of the maximum hardscape percentage. Section 9.08.040.050 (Landscaping – General Provisions) of Chapter 9.08 (Single-Family Residential Development Standards), Section 9.12.040.080 (Landscaping – General Provisions) of Chapter 9.12 (Multifamily Residential Development Standards), and Section 9.16.040.060 (Landscaping – General Provisions) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) are proposed to be revised.

The current language in the Municipal Code allows for up to a five-foot (5'-0") wide walkways to be exempted from the hardscape requirements in residential zones. The Code does not specify how many walkways, or the allowed locations of the walkways that can be exempted from this requirement. The Amendment strikes this allowance in its entirety, leaving a simpler maximum 50% hardscape area. In commercial zones, the 50% maximum requirement will be removed altogether, consistent with other Development Standards of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards).

The amended language of the Landscape General Provisions would be consistent with the aforementioned Residential General Development Standards section of the Municipal Code. The maximum hardscape in the front yard setback will continue to be limited to a maximum of 50%. By limiting, and specifying, the exceptions to the maximum hardscape area, the calculation becomes easier to implement. It is expected that the net amount of landscape versus hardscape will largely stay unchanged Citywide.

#### Landscaping Requirements:

Currently, the use of artificial turf as a substitute landscaping material is implemented with similar regulations across all zones in the City. Any changes to the requirements for artificial turf will need to be revised across all residential, commercial, industrial, and mixed-use zones. Therefore, the proposed amendments would amend Section

9.08.040.060 (Landscaping Requirements) of Chapter 9.08 (Single-Family Residential Development Standards), Section 9.12.040.090 (Landscaping Requirements) of Chapter 9.12 (Multifamily Residential Development Standards), Section 9.16.040.070 (Landscaping Requirements) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and Section 9.18.120.030 (Landscaping Requirements) of Chapter 9.18 (Mixed Use Regulations and Development Standards).

The proposed Amendment to the language of the artificial turf regulations will add specific language to guide the installation of artificial turf. Currently, the Municipal Code defers artificial turf installation to manufacturers' requirements. Compared to when the artificial turf requirements were originally crafted, artificial turf is much more readily available to purchase at home improvement stores and other retailers. Retail purchases of artificial turf are often absent any guidance from manufacturer or certified landscapers; installing artificial turf is not bound to any proper installation techniques. This Amendment of the Municipal Code can give guidance on how to properly and safely install artificial turf across all zones.

The intent of the artificial turf landscaping is to mimic the look and feel of live grass. The proposed Amendment is consistent with that same intent. Specifically, the proposed modification to the artificial turf requirements clarify what type of turf is required, how it shall be installed, what type of base layer is required, and guide the proper maintenance of said turf. If adhered to, the proposed language can help ensure artificial turf is installed safely, and that its appearance is long-lasting. This can help limit any hazards related to turf (e.g., uplifting seams or edges), allow proper drainage, and improve the aesthetics of turf installations.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

**A-038-2023(A) - RETAIL SALE BY DELIVERY OF MEDICINAL CANNABIS**

The adoption of an ordinance is not subject to the California Environmental Quality Act ("CEQA") where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines Section 15061(b)(3)). The proposed ordinance merely implements the provisions of State law governing retail sale of medicinal cannabis and will impose limits and procedural requirements on this activity, which is already permitted by State law. The ordinance will not result in new land uses or authorize new activities that have the potential to significantly affect the environment.

**A-038-2023(B) - FOCUSED CODE ENFORCEMENT ZONING AMENDMENT**

The operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, are categorically exempt from CEQA pursuant to CEQA's Class 1 Categorical exemption. (CEQA Guidelines Section 15301) The proposed Amendment will make minor and clarifying amendments to existing zoning provisions governing enclosures screening mechanical equipment installed on private residential property, the

calculation of the maximum amount of hardscape that may be installed in the front yard setback on private property, and standards for the installation of artificial turf on private property, each of which are activities covered by the Class 1 exemption. The proposed Code amendments are also exempt from CEQA pursuant to the "common sense" exemption because it can be seen with certainty there is no possibility they may have a significant impact on the environment. (CEQA Guidelines Section 15061(b)(3))

The modified language of the Amendment does not introduce new development standards; the Amendment merely clarifies the way the existing standards of the Code are applied. Therefore, it can be assumed that there is no environmental effect relating to the Amendment.

**RECOMMENDATION:**

Staff recommends that the Planning Commission:

1. Adopt Resolution No. 6071-23 recommending that the Garden Grove City Council approve Amendment No. A-038-2023(A).
2. Adopt Resolution No. 6072-23 recommending that the Garden Grove City Council approve Amendment No. A-038-2023(B).



MARIA PARRA  
Planning Services Manager



By: Mary Martinez  
Urban Planner



By: Priit Kaskla, AICP  
Associate Planner

Attachment 1: Department of Cannabis Control Regulations Pertaining to Retail Sale by Delivery of Medicinal Cannabis

Attachment 2: Resolution No. 6071-23 for Amendment No. A-038-2023(A)

Attachment 3: Resolution No. 6072-23 for Amendment No. A-038-2023(B)