



**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Santa Barbara County Board of Supervisors

FROM: Glenn S. Russell, Ph.D., Director

DATE: January 31, 2018

RE: Cannabis Land Use Ordinances (Scheduled for Open Session on February 6, 2018, Departmental Agenda Item #3)

Background

At the January 10, 2018, hearing regarding the cannabis land use ordinance amendments and environmental impact report (EIR), the County Planning Commission (CPC) received public testimony and continued the hearing to January 24, 2018. At the January 24, 2018, hearing, the CPC received public testimony, asked additional questions of staff, and made a motion on recommended amendments to the Land Use and Development Code (LUDC) and Coastal Zoning Ordinance (CZO). The action letter from the CPC and resolutions can be found in Attachment 13. Based on the Planning Commission's recommendations, Planning and Development staff revised the draft ordinance amendments (LUDC in Attachment 2 and CZO in Attachment 3 to this memo). Due to the recommended changes to the ordinance, staff has also amended the Findings (Attachment 1, as set forth in this memorandum dated January 31, 2018) and the Revision Letter (Attachment 8, as set forth in this memorandum dated January 31, 2018). Staff has also included a California Environmental Quality Act (CEQA) Notice of Exemption for the CZO (Attachment 14, to this memorandum).

Recommended Actions – Revised Pursuant to the CPC's Recommendations

In order to incorporate the CPC's recommendations, staff recommends that the Board take the following specific actions:

- a) CEQA
 - i) Determine that the adoption of the Coastal Zoning Ordinance amendments, Case No. 17ORD-00000-00010, is exempt from CEQA pursuant to State CEQA Guidelines section 15265 (Attachment 14, as set forth in this memorandum dated January 31, 2018);
 - ii) Make the required findings for approval for the proposed ordinances and resolutions, including CEQA findings and the statement of overriding considerations (Attachment 1, as set forth in this memorandum dated January 31, 2018);

- iii) Certify the Cannabis Land Use Ordinance and Licensing Program Final Programmatic Environmental Impact Report (EIR) (Case No. 17EIR-00000-00003, State Clearinghouse No. 2017071016) (Attachment 7, as set forth in the Board letter dated February 6, 2018) and the associated revision letter (RV 01, Attachment 8, as set forth in this memorandum dated January 31, 2018) for Case Nos. 17ORD-00000-00004, 17ORD-00000-00009, 17ORD-00000-00019, and 18ORD-00000-00001, and adopt the mitigation monitoring and reporting program as incorporated in the above referenced ordinances pursuant to the State CEQA Guidelines.

b) Santa Barbara County Code Amendments

- i. Adopt an ordinance (Case No. 17ORD-00000-00004) amending Section 35-1 of the Santa Barbara County LUDC, of Chapter 35, Zoning, of the County Code (Attachment 2, as set forth in this memorandum dated January 31, 2018);
- ii. Adopt an ordinance (Case No. 17ORD-00000-00010) amending Section 35 of the Santa Barbara County CZO, of Chapter 35, Zoning, of the County Code (Attachment 3, as set forth in this memorandum dated January 31, 2018);
- iii. Adopt an ordinance (Case No. 17ORD-00000-00009) amending Section 35-2 of the Santa Barbara County MLUDC, of Chapter 35, Zoning, of the County Code (Attachment 4, as set forth in the Board agenda letter for February 6, 2018);
- iv. Adopt a resolution and an ordinance (Case No. 17ORD-00000-00019) amending the Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones (Attachment 5, as set forth in the Board agenda letter for February 6, 2018);

c) Article X Amendment and Partial Rescission

- i. Adopt an ordinance (Case No. 18ORD-00000-00001) amending and partially rescinding Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the County Code (Attachment 6, as set forth in the board agenda letter for February 6, 2018);

d) Resolution Transmitting Case No. 17ORD-00000-00010 (CZO) to the Coastal Commission.

- i. Adopt a resolution transmitting Case No. 17ORD-00000-00010 (CZO) to the Coastal Commission for certification by the California Coastal Commission as an amendment to Santa Barbara County's certified Local Coastal Program (Attachment 9, as set forth in the board agenda letter for February 6, 2018);
- ii. Find that transmittal of the Resolution is an administrative activity of the County, which will not result in direct or indirect physical changes in the environment and is therefore not a "project" as defined for purposes of the California

Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5); and

- iii. Direct the Planning and Development Department to transmit the adopted Resolution to the Executive Director of the Coastal Commission.

Recommended Ordinance Amendment Summary

Staff revised the draft ordinance amendments to reflect the CPC's recommendations; the revisions to the ordinance amendments are shown below. Additions are shown in **red underline**, and deletions are shown in **red strikethrough**.

1. Personal Cultivation (LUDC § 35.42.075.B.2 and 35-144U.B.2).

The CPC discussed the allowance of personal cultivation in a legally established accessory structure. Concerns were raised that these types of structures might be more accessible for theft. CPC strengthened the existing standard by adding language to the effect that all structures must be locked. Staff is in agreement with this change. The following recommended ordinance text was amended as follows:

- b. Cultivation of cannabis for personal use shall only occur within:
 - (1) A legally established **secure** dwelling, or
 - (2) An enclosed, legally established **secure** building that is accessory to a dwelling.

2. Noticing (LUDC § 35.42.075.B.3 and 35-144U.B.3).

Currently, noticing of nearby property owners and renters for any discretionary permit is 300 feet from the lot line that contains the proposed project. After considering the staff report and public testimony, the CPC determined that an additional noticing buffer for neighbors of 1,000 feet would be appropriate. Staff is in agreement with this change. The following recommended ordinance text was added:

Entitlements for commercial cannabis uses and/or development shall be subject to the applicable noticing requirements set forth in Chapter 35.106 (Noticing and Public Hearings)/ Section 35-181 (Noticing), except that a mailed notice regarding a pending action or hearing regarding a commercial cannabis entitlement shall be provided to all owners of property located within a 1,000-foot radius of the exterior boundaries of the subject lot.

3. "Permit Requirements for Cannabis" Table (LUDC § 35.42.075.B.4 and CZO § 35-144U.B.4).

The CPC discussed the Land Use Tables and the appropriateness of each commercial cannabis land use by zoning district. The CPC found that cultivation and non-volatile manufacturing were not an appropriate use in most commercial zones. In the Shopping Center (SC) zone, the CPC found that non-volatile manufacturing should be permitted through a major conditional use permit (CUP). There was also discussion regarding the various zoning districts in which a mix of commercial and residential uses are allowed. The CPC recommends that non-volatile manufacturing and retail in these areas be allowed with the approval of a CUP, to ensure that the proposed project is compatible with the

surrounding uses. In addition, the CPC also determined that the use of testing would be appropriate in the Limited Commercial (C-1), Retail Commercial (C-2) zones. Staff is in agreement with these changes. The following changes were made to the uses that are recommended to be allowed by zone:

- Commercial cultivation shall not be permitted in the General Commercial (C-3) zone.
- Nonvolatile manufacturing shall not be permitted in the C-1, C-2, General Commercial (C-3), and Service Commercial (CS) zones.
- Nonvolatile Manufacturing shall be permitted in Shopping Center (SC), Mixed Use (MU), Community Mixed Use Los Alamos (CM-LA), Old Town - Residential/Light Commercial (OT-R/LC), and Old Town - Residential / General Commercial (OT-R/GC) zones with a CUP.
- Retail shall be permitted in MU, CM-LA, OT-R/L, and OT-R/G zones with a CUP.
- Distribution shall be permitted in Agriculture-I zones with a CUP.
- Testing shall be permitted with a land use permit or coastal development permit in C-1 and C-2 zones.

4. Sensitive Receptors (LUDC § 35.42.075.B.4 and CZO § 35-144U.B.4).

State law prohibits the location of commercial cannabis activities within 600 feet of a school, day care, or youth center. The CPC was forwarded a recommendation from the Montecito Planning Commission that involved increasing this buffer from sensitive receptors from 600 feet to 1,500 feet for cannabis activities in the Coastal Zone, which would eliminate all commercial cannabis activities from being allowed within the area that is subject to the Montecito Community Plan. The CPC reviewed maps that showed the location of a 600, 1,000, and 1,500 foot buffer. The CPC recommended that—for both the inland area and Coastal Zone—the buffer should be 1,000 feet. Staff is in agreement with these changes.

This recommended buffer is set forth in the footnote of the cannabis land use table(s), which states: “The proposed cannabis operation shall not be located within ~~600~~ 1,000 feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center.”

5. Odor Abatement (LUDC § 35.42.075.C.7 and CZO § 35-144U.C.7).

The CPC received public testimony regarding the detrimental effect of cannabis odors on communities in Santa Barbara County. In response, the CPC further strengthened the Odor Abatement Plan ordinance language. Staff is in agreement with these changes. The following changes were made to the recommended odor abatement requirements of the ordinances.

- Delete text from the Odor Abatement Plan requirements, as follows: “The Odor Abatement Plan must reduce odors that are experienced within residential zones, ~~to the maximum extent feasible~~ as determined by the Director.”

- Add the following text to the Odor Abatement Plan requirements: “The applicant shall allow the Department access to the facility at all times, without notice, for the purpose of inspecting odor mitigation practices, odor source(s), and complaint tracking system records.”
- Remove the text from the Odor Abatement Plan C.7.h and replace with new text, as follows:

~~If three verified complaints are received during any 30-day period, then the applicant shall submit to the Department a report, certified by a Professional Engineer or a Certified Industrial Hygienist, for review and approval, which sets forth corrective actions and the timing for such actions to mitigate the odor. Implementation of the corrective actions must occur within 30 days, unless the timeframe is extended by the Director for good cause. Following implementation of the corrective actions, if three verified odor complaints are received during a 30-day period, additional corrective actions may be required, up to and including revocation of the permit.~~

If the Department receives three verified complaints regarding odor events in any 365-day period, the Permittee shall implement corrective actions to comply with the odor abatement requirements of this Section 35-144U.C.7./35-144U.C.7. Upon the Department’s request, the Permittee shall submit a written statement that sets forth the corrective actions and timing of implementation of each corrective action, subject to the Department’s review and approval. The department may require the corrective actions to be re-certified by a Professional Engineer or a Certified Industrial Hygienist. Notwithstanding the requirements of this Section, the Department may take additional enforcement actions pursuant to Chapter 35-108 (Enforcement and Penalties) which may include, but are not limited to, initiating proceedings to revoke the applicable cannabis land use entitlement(s).

- Delete the following text from the Odor Abatement Plan C.7.i:

~~*If an applicant reasonably believes that odors will be undetectable beyond the lot lines of the lot on which the cannabis activity will occur and, consequently, an complete Odor Abatement Plan is unnecessary, the applicant shall submit written documentation with the application for the cannabis permit, which sets forth the reasons why an Odor Abatement Plan is unnecessary, for the Department’s review and approval. If, in the event the Odor Abatement Plan is deemed unnecessary the applicant shall still be required to follow the above regulations in subsection f regarding a local contact and odor complaints.*~~

6. Distribution and manufacturing as accessory uses within the Ag-I And Ag-II zones (LUDC § 35.42.075.D.3 and 4 and CZO § 35-144U.C.7D.3 and 4).

The CPC also discussed certain limitations that staff recommended to the CPC regarding certain distribution and manufacturing accessory uses on AG-I and AG-II properties. More specifically, staff recommended that the distribution and manufacturing of cannabis should be allowed as an accessory use to cannabis cultivation on AG-I and AG-II properties. However, in order to ensure that cannabis cultivation would be the principal use of the property, and distribution and manufacturing would be an accessory use to the cannabis cultivation on the property, staff recommended that at least 50% of the cannabis that is manufactured on, and distributed from, a property must be sourced from cannabis grown on the same site where the manufacturing and distribution uses would occur. Furthermore, Staff recommended that this 50% requirement be included in the ordinance amendments to be consistent with how other, similarly situated agricultural development (e.g., wineries) which involve the processing of agricultural products are regulated.

However, certain members of the CPC did not support this staff recommendation. They stated that reducing the amount of cannabis grown on site will allow other properties to utilize one regional site instead of each cultivator needing his/her own distribution and manufacturing permits. They stated that this revised approach would lessen the effect of more structures being built on agricultural land. However, other members contended that this revised approach would cause the proliferation of cannabis facilities across the County. Dissenting members indicated that having on-site cultivation account for at least 50% of the product to be processed was a good County policy. Chair Blough conducted a “straw poll” on this item, which was carried by a vote of 3 to 2, to recommend that 10% rather than 50% of the cannabis that is manufactured on, and distributed from, a property must be sourced from cannabis grown on the same site where the manufacturing and distribution uses would occur.

Staff disagrees with this CPC-recommended change for the reasons set forth above. Regardless, the following changes were made to the recommended regulations regarding distribution and manufacturing, in order to reflect the CPC’s recommendation:

- **Distribution.**
 - a. **Cultivation limits.** Distribution on a lot zoned AG-I or AG-II shall only be allowed as an accessory use to cannabis cultivation and shall comply with the following requirements:
 - 1) A minimum of ~~1050~~10% of the cannabis product distributed shall be sourced from cannabis plant material cultivated on the same lot on which the distribution activities will occur.

- **Manufacturing.**
 - a. **Cultivation limits.** Manufacturing (volatile and non-volatile) on a lot zoned AG-I or AG-II shall only be allowed as an accessory use to cannabis cultivation and shall comply with the following requirements:
 - 1) A minimum of ~~1050~~10% of the cannabis product manufactured shall be sourced from cannabis plant material cultivated on the same lot on which the manufacturing activities will occur.

- 2) Manufacturing shall be subordinate and incidental to the cultivation use of the lot, and the area designated for manufacturing shall occupy a smaller footprint than the area that is designated for cultivation on the lot.

7. Onsite Consumption (LUDC § 35.42.075.D.6 and CZO § 35-144U.C.7D.6).

The State regulations currently allow consumption of cannabis at cannabis retail sites with certain restrictions. However, the CPC contends that the consumption of cannabis products at retail sites would not be appropriate for the County. Staff is in agreement with this change. Ordinance language was added stating:

No cannabis consumption, including, but not limited to, smoking, vaporizing or ingesting, shall be permitted on the premises of a retailer or microbusiness.

8. Additional Recommendations. The CPC also requested that the Board review the following:

- The possibilities for a concentration limit for cannabis retail permits.

Staff will present information regarding what other jurisdictions have done for concentration, as well as the State's current concentration limits, at the Board hearing.

- Mechanisms to expedite the CUP process for cannabis activities.

The time allotted to process a CUP is set forth in the Permit Streamlining Act (Government Code § 65920 et seq.). However, Planning and Development staff is always looking for ways to increase the efficiency and effectiveness of the permit process, in order to exceed the standards set forth in the Permit Streamlining Act and provide excellent customer service. In order to achieve these goals, Planning and Development staff would (among other things): request additional staff resources to enforce cannabis regulations; work with other County departments that would be involved in the permitting of cannabis operations, in order to develop effective procedures to efficiently review cannabis applications; prepare application forms that are tailored to cannabis uses, in order to clearly articulate the unique CUP application requirements that would apply to cannabis operations; and utilize various media and opportunities (e.g., the Planning and Development website, public informational workshops, and Planning Commission hearings) to inform applicants and others of the CUP application requirements and solicit feedback from applicants and others regarding ways to improve the permitting process.

- Chair Blough requests that the Board consider information that he acquired regarding odor detecting technology and other items regarding the enforcement of odor abatement regulations (Attachment 15). Staff reviewed this information and will forward the research to the new cannabis team for their review if the ordinances are adopted, and pursuant to any specific direction that the Board provides on this matter.

Attachments:

- 1 Findings for Approval
- 2 Ordinance amending the LUDC (Case No. 17ORD-00000-00004)
- 3 Ordinance amending the CZO (Case No. 17ORD-00000-00010)

- 8 Revision Letter (RV01)
- 13 CPC Action Letter and Resolutions
- 14 Notice of Exemption
- 15 Chair Blough's research on Odor detection