



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development (P&D)
Department No.: 053
For Agenda Of: August 16, 2022
Placement: Departmental
Estimated Time:
Continued Item: Yes
If Yes, date from: May 24, 2022
Vote Required: Majority

TO: Board of Supervisors (Board)

FROM: Department Lisa Plowman, (805) 568-2068
Director(s)
Contact Info: Dan Klemann, (805) 568-2072

SUBJECT: Cannabis Ordinance Amendments, Case No. 22ORD-00000-00001

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That on August 16, 2022, the Board consider Planning Commission recommended ordinance amendments to the County Land Use and Development Code (LUDC), to implement new permit requirements regarding commercial cannabis cultivation and processing, and align existing Odor Abatement Plan (OAP) standards with the new Conditional Use Permit (CUP) requirements. Pursuant to the Planning Commission's recommendation, the Board's actions should include the following:

- a) Make the required findings for approval, including California Environmental Quality Act (CEQA) findings (Attachment 1);
- b) After considering the Final Program Environmental Impact Report (PEIR) adopted for the Cannabis Land Use Ordinance and Licensing Program (Cannabis Program) (17EIR-00000-00003) (Attachment 2), determine that as reflected in the CEQA findings (Attachment 1), no subsequent environmental document shall be prepared for this project pursuant to CEQA Guidelines Section 15162; and adoption of the LUDC Amendment (Case No. 22ORD-00000-00001) is within the scope of the program approved earlier, and the Final Program EIR adopted for the Cannabis Land Use Ordinance and Licensing Program (17EIR-00000-00003) (Attachment 2) adequately describes the activity for the purposes of CEQA pursuant to CEQA Guidelines Section 15168(c)(2); and

- c) Adopt the ordinance (Case No. 22ORD-00000-00001) to amend the LUDC, which is included as Attachment 4 to this Board letter.

Summary Text: At the May 24, 2022, hearing, the Board considered the recommendation of the County Planning Commission (Attachment 6). The Board directed staff to return on August 16, 2022, after making the following revisions:

- a. Revise the CUP requirement to apply to the following:
 - All commercial cultivation in the Inland Area AG-II (Agriculture II) zone
 - Outdoor commercial cannabis cultivation (including mixed-light and nursery) in the M-RP (Industrial Research Park), M-1 (Light Industry), and M-2 (General Industry) zones
- b. Amend the LUDC (subsection 35.42.075.B) to specify new permit requirements for certain commercial cannabis processing activities (including activities associated with drying, curing, and trimming) on lots located in the AG-I (Agriculture I), AG-II, M-RP, M-1, and/or M-2 zone(s).

As previously discussed in the May 24, 2022, Board letter (Attachment 11), the proposed change to require a CUP instead of LUP would afford County decision-makers greater discretion when considering new commercial cannabis operations with an additional discretionary review and approval process. The approval of a CUP would make the Planning Commission the decision-maker for the permits and also require the Planning Commission to make additional findings (LUDC Section 35.85.060.F) that are not required to approve a Land Use Permit (LUP) (LUDC Section 35.82.110.F). The additional CUP findings set forth additional discretionary standards (e.g., that the project will be compatible with surrounding uses and will not be detrimental to neighborhood comfort, convenience, general welfare, health, and safety) with which proposed projects must comply and, therefore, would afford decision-makers greater discretion than currently afforded to them when considering to approve new commercial cannabis cultivation projects.

The proposed, draft ordinance to implement these changes to the LUDC is included as Attachment 5 to this Board letter. The final ordinance that includes the changes to the LUDC without track-changes is included as Attachment 4 to this Board letter.

Background:

On September 14, 2021, the Board directed staff to engage the Planning Commission and return to the Board with recommendations on cannabis ordinance amendments that would afford County-decision makers greater discretion when considering new commercial cannabis applications in the inland Agricultural and Industrial zones. On May 11, 2022, the Planning Commission adopted a resolution (Attachment 6) recommending the Board consider adopting an ordinance to require a CUP for cannabis cultivation, subject to the following:

- Consider exempting from the requirements of the ordinance projects subject to a LUP that the Director has previously approved and/or are on appeal;
- Require an OAP for all commercial cannabis cultivation; and

- Do not require a CUP for indoor commercial cannabis cultivation and indoor nurseries in the M-RP, M-1, and M-2 zones.

On May 24, 2022, the Board considered the Planning Commission's recommended amendments and suggested additional revisions. After deliberation, the Board continued the hearing to August 16, 2022, such that (1) the operative date of the ordinance would be 120 days after the May 24, 2022, hearing, and (2) for staff to return with revisions to the previously considered proposed amendments, which included different permit requirements for cannabis processing.

Revised CUP Requirement

Currently, an LUP is the required use permit for commercial cannabis cultivation in the Inland Area AG-II, M-RP, M-1, and M-2 zones. Pursuant to the Board's May 24, 2022, direction, the proposed CUP permit requirement was revised to apply only to outdoor cultivation and outdoor nursery uses in the Inland M-RP, M-1, and M-2 zones, and all types of cannabis cultivation (e.g., outdoor, mixed-light, indoor, and nursery) in the Inland AG-II zone.

The proposed amendments would limit the applicability of the CUP requirement only to (1) new operations (applications that have not received final approval prior to the effective date of the ordinance) and (2) existing operations that propose changes that do not qualify as minor changes under the LUDC, such as changes that result in a new, adverse environmental effect or the need for additional mitigation measures, or changes that substantially deviate from an approved plan or issued permit. Further, the proposed change in permitting requirements has the potential to aid in reducing the potential for negative impacts on people, communities, and the environment.

Applicants proposing new operations in the future or in-process proposals that have not yet received final approval would need to apply for a CUP (or their existing LUP applications, if complete, would be converted to CUP applications) and would be subject to the CUP approval process, including design review and a public hearing (LUDC Section 35.82.060). Applicants would be required to prepare and submit an OAP if adjacent to an Existing Developed Rural Neighborhood (EDRN) or Urban Rural boundary, or if cannabis cultivation areas cumulatively exceed 51% of the subject lot area (gross) on lots zoned AG-II. Permittees of existing operations could propose minor changes, similar to other LUPs, so long as those minor changes do not substantially deviate from their approved plans, do not change the use or scope of development, and do not result in a new, adverse environmental effect or the need for additional mitigation measures.

The amendments to the LUDC would take effect 30 days after Board adoption and become operative on September 22, 2022. After the respective ordinance becomes operative, projects for which LUPs have not been issued would be subject to the new CUP requirements. Cannabis activities that are the subject of an issued LUP must remain in compliance with LUDC Section 35.82.110.

Commercial Cannabis Processing Permit Requirements

In addition, the Board directed staff to specify new required permit types to allow cannabis processing activities consisting of drying, curing, trimming, storing, packing, and labeling (i.e., processing activities

except for manufacturing ones). The proposed permit requirements would apply to existing and new cannabis cultivation sites on lots zoned AG-I, AG-II, M-RP, M-1, and/or M-2.

As set forth in the proposed ordinance, the cannabis processing permit type requirements are described below:

- a. Existing commercial cannabis operators with an approved LUP, may add processing to their operations with an LUP;
- b. Existing commercial cannabis operators with an approved CUP may add processing to their operations with a revised CUP; and
- c. New operations (not subject to an existing permit) would be subject to a CUP.

The addition of cannabis processing to an existing or new cannabis cultivation site shall remain in compliance with odor development standards set forth in LUDC Section 35.42.075.C.6 (if applicable). Cannabis processing activities are required to utilize (1) the best available odor control technology in an enclosed structure or (2) use techniques and/or equipment to achieve the equivalent or greater results of odor control as could be achieved using an enclosed structure.

Environmental Review

On February 6, 2018, the Board certified a PEIR (Case No. 17EIR-00000-00003) for the County's Cannabis Land Use Ordinance and Licensing Program (Program). The PEIR was prepared in accordance with the State CEQA Guidelines Section 15168 and evaluated the Cannabis Program's direct, indirect, and cumulative impacts based on Appendix G of the 2017 State CEQA Guidelines and thresholds in the County's Environmental Thresholds and Guidelines Manual (County of Santa Barbara 2008, revised January 2021). The PEIR identified a number of significant impacts and set forth feasible mitigation measures that were included as development standards and requirements in the land use and licensing ordinances, which are applied to site-specific land use entitlement and business licensing applications for commercial cannabis operations authorized under the Cannabis Program. The PEIR concluded that significant and unavoidable impacts will result from the Cannabis Program. The Board adopted a Statement of Overriding Considerations for the significant and unavoidable impacts (Attachment 3).

Section 15168(c)(2) of the State CEQA Guidelines allows the County to approve an activity as being within the scope of the project covered by a PEIR if the County finds pursuant to Section 15162(a) that no new environmental document is required. This ordinance is within the scope of the project covered by the PEIR for the Cannabis Program and changing the required permit for commercial cannabis cultivation from an LUP to a CUP will not have any environmental impacts and no new environmental document is required pursuant to CEQA Guidelines Section 15162(a). Changing the permit requirement from an LUP to a CUP provides County decision-makers with additional discretion over proposed projects, and existing operations that propose major changes. These changes are within the scope of the project evaluated in the PEIR and do not have the potential to create a significant adverse impact to the environment.

Therefore, the Board should find that a new environmental document is not required and the proposed LUDC amendments do not require subsequent environmental review pursuant to CEQA Guidelines Section 15162 and 15168(c)(2) (Attachment 2).

Comprehensive Plan Consistency

The Board adopted the Program after making a finding that it was in conformity with other mandatory and optional elements of the Comprehensive Plan and Community Plans. The LUDC cannabis regulations that the Board adopted established standards to protect the public health, safety, and welfare, and enact strong and effective regulatory and enforcement controls.

The proposed ordinance will further protect neighborhood character, and potentially reduce negative impacts on people, communities, and the environment. A CUP, as compared to an LUP, affords decision-makers additional discretion and requires decision-makers to consider additional findings when determining whether to approve a proposed project. Decision-makers may impose conditions on a proposed project in order to make the requisite findings for approval. Furthermore, the ordinance amendments would revise certain regulations involving nonconforming uses and minor changes to existing permits to (1) ensure that there is internal consistency among these regulations; (2) allow limited and beneficial changes (e.g., changes to improve the efficacy of odor control systems) to existing and approved operations; and (3) continue to require design review for projects that are located within the Critical Viewshed Corridor (CVC) or Design Control (D) Overlay Zones.

The proposed ordinance amendments would not allow new land uses, development, or alter the purpose and intent of any policies or development standards of the Comprehensive Plan. In order for County decision-makers to approve a LUP or CUP for new cannabis cultivation, the decision-makers would need to determine that the project is consistent with the policies and development standards of the Comprehensive Plan (LUDC Section 35.82.060.E.1.f). As part of this process, P&D staff would perform a policy consistency analysis during the review of the application, and County decision-makers would not approve the project unless they can determine it is consistent with applicable policies and the findings required for approval.

Fiscal and Facilities Impacts:

Funding for this project is budgeted in P&D's Long Range Planning Budget Program on page D-387 of the County of Santa Barbara Fiscal Year (FY) 2022-23 adopted budget. There are no facilities impacts.

Special Instructions:

P&D will fulfill noticing requirements.

The Clerk of the Board shall provide a copy of the signed ordinances and resolution, and minute order, to P&D, attention: Corina Venegas.

Attachments:

1. Findings for Approval
2. Final Program Environmental Impact Report for the Cannabis Land Use Ordinances and Licensing Program (link)
3. Statement of Overriding Considerations (link)
4. Final LUDC Ordinance Amendment
5. LUDC Ordinance Amendment with Changes Shown

Cannabis Land Use Ordinance Amendments

Case No. 22ORD-00000-00001

Board of Supervisors

Hearing Date: August 16, 2022

Page 6 of 6

6. Revised Resolution of the County Planning Commission
Revised Resolution C-1, LUDC Amendments with Changes Shown
Revised Resolution C-2, LUDC Amendments for Adoption (Case No. 22ORD-00000-00001)
7. Planning Commission Action Letter, dated May 11, 2022
8. Planning Commission Staff Report, dated May 3, 2022
9. Planning Commission Memorandum, dated May 4, 2022
10. Planning Commission Memorandum, dated May 6, 2022
11. Board of Supervisors Board Letter, dated May 24, 2022

Authored by:

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