



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: May 24, 2022
Placement: Departmental
Estimated Time:
Continued Item: No
If Yes, date from:
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

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That on May 24, 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. Pursuant to the Planning Commission's recommendation, the Board's actions should include the following:

- a) LUDC Amendment (Case No. 22ORD-00000-00001):
 - i) Make the required findings for approval, including California Environmental Quality Act (CEQA) findings (Attachment 1);
 - ii) 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

- iii) Adopt the ordinance (Case No. 22ORD-00000-00001) to amend the LUDC, which is included as Attachment 3 to this Board letter.

Summary Text: Pursuant to the Board’s direction, P&D staff presented LUDC ordinance amendments to the Planning Commission on May 11, 2022, to amend the permitting requirements for all commercial cannabis cultivation in the Agricultural and Industrial zones located within the Inland Area of the county. The Planning Commission adopted a resolution (Attachment 3) recommending that the Board amend the LUDC to require a Conditional Use Permit (CUP) for all commercial cannabis cultivation (e.g., outdoor, mixed-light, indoor, and nursery) in the Inland Area AG-II (Agriculture II), M-RP (Industrial Research Park), M-1 (Light Industry), and M-2 (General Industry) zones.

Background:

On September 14, 2021, the Board directed staff to develop and prioritize ordinance amendments to require approval of a CUP instead of a Land Use Permit (LUP), for all commercial cannabis cultivation. As described further below, the proposed change would afford County decision-makers greater discretion when considering proposed, new commercial cannabis operations that involve cultivation with an additional discretionary review and approval process. The decision-maker for an LUP is the P&D Director (unless appealed to the Planning Commission and, ultimately, the Board), whereas the Planning Commission is the review authority and final decision maker for CUPs (unless appealed to the Board).

The approval of a CUP would require the Planning Commission to make additional findings (LUDC Section 35.85.060.F) that are not required to approve an 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.

Proposed Amendments

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. The proposed CUP permit requirement change would apply to all types of cannabis cultivation (e.g., outdoor, mixed-light, indoor, and nursery) in specific Agricultural and Industrial zones. 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. There are currently eight projects subject to the LUDC that have approved LUPs, but were appealed and these appeals have not been resolved and therefore do not have final approval status. As drafted, the ordinance would require these projects to obtain a CUP if the final appeal is not resolved prior to the effective date of the ordinance. If this ordinance is adopted as proposed, these projects would be converted to CUPs prior to the next appeal hearing. This conversion would entail paying approximately \$12,000 in additional permit fees for changing the LUP findings to CUP findings, not including the cost of an OAP if applicable. As outlined below, the Board could exclude approved projects that are on appeal from the CUP requirement.

The proposed permit type change has the potential to aid in reducing the potential for negative impacts on people, communities, and the environment. Proposed commercial cannabis cultivation projects would remain subject to applicable standards in Section 35.42.075, for example, and would be required to prepare and submit an Odor Abatement Plan (OAP) if a project is adjacent to an Existing Developed Rural Neighborhood (EDRN) or Urban Rural boundary.

Impacts of Proposed Ordinance Amendments

The amendments to the LUDC would take effect 30 days after adoption. Therefore, after the proposed ordinance takes effect, an existing commercial cannabis cultivation operation currently permitted with an LUP that has not yet expired would become a “nonconforming use,” and as described further below, that could be changed only to the limited extent that the LUDC allows, without losing its legal nonconforming status and requiring a CUP.

The LUDC (Article 35.11, Glossary, definition of “nonconforming use”) generally states that if the LUDC changes with regard to the type of permit that is required for a use, then existing uses that do not conform to the LUDC’s regulations on use become “nonconforming uses.” Nonconforming uses are subject to significant restrictions set forth in the LUDC (Chapter 35.101) before they lose their legal nonconforming status. Therefore, if the Board changes the type of permit that is required for commercial cannabis cultivation from an LUP to a CUP, an argument could be made that existing commercial cannabis cultivation operations permitted with LUPs would become “nonconforming uses” that could be changed only to the limited extent that the LUDC allows, without losing their legal nonconforming status and being subject to a CUP.

The process for obtaining a CUP is expensive, time-consuming, presents business risks to operators, and likely would result in more conditions (i.e., restrictions) on an operation as compared to current conditions with an LUP. As such, a new CUP requirement could disincentivize current operators from making minor changes and certain beneficial changes to their operations that the Board has been encouraging operators to implement (e.g., changes to improve the efficacy of odor control systems). In order to address this concern, the proposed amendments clarify that commercial cannabis cultivation operations permitted with an LUP do not qualify as nonconforming uses because they are lawfully existing with the approval of a discretionary permit that was required by the LUDC and remain allowed by the LUDC in their current location.

Therefore, in order to avoid disincentivizing current operators from implementing beneficial changes or operation improvements, the proposed ordinance 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 ordinances) 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. As stated above, there are currently seven projects subject to the LUDC that have approved LUPs, but were appealed. These projects would be required to obtain a CUP if the appeal is not resolved prior to the effective date of the ordinance. Some applicants have raised a concern about being required to obtain a CUP as this point in the permit process. This issue could be addressed by providing direction to staff to amend the ordinance to exclude projects that have obtained approval of an LUP by the Director

or the Planning Commission (on appeal), but have been appealed prior to the effective date of the ordinance. The Planning Commission broadly discussed and considered the applicability of this ordinance for in-process projects.

Proposed new operations that have not yet received final approval would need to apply for CUPs (or their existing LUP applications, if complete, would be converted to CUP applications) and proceed through the CUP approval process, which includes design review and a public hearing (LUDC Section 35.82.060). 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. Cannabis operations would be required to prepare and submit an Odor Abatement Plan (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.

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.

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 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.

Planning Commission Recommendation

On May 11, 2022, the Planning Commission voted 5-0 to recommend the Board adopt LUDC ordinance amendments (discussed further in this Board letter above) to require a CUP rather than an LUP for commercial cannabis cultivation in specific Agricultural and Industrial zones (Attachment 4 and 5), and provided potential options for the Board to consider (Attachment 4). The Planning Commission's options include the following:

- Consider exempting from the requirements of this ordinance projects subject to a Land Use Permit (LUP) that the Director has previously approved and/or are on appeal;
- Require an odor abatement plan for all commercial cannabis cultivation; and
- Do not require conditional use permits for indoor commercial cannabis cultivation and indoor nurseries in the industrial zones (i.e., M-RP, M-1, and M-2 zones).

Government Code Section 65356(a) states that the Board (as the legislative body for the unincorporated County) may approve, modify, or disapprove the recommendations of the Planning Commission. The Board may accept, reject, or accept with changes, any of the items addressed in this Board letter above and/or any other item that is addressed in the proposed ordinance (Attachment 3).

Fiscal and Facilities Impacts:

Funding for this project is budgeted in the Planning and Development Department's Long Range Planning Budget Program on page D-318 of the County of Santa Barbara Fiscal Year (FY) 2021-22 adopted budget. There are no facilities impacts.

Special Instructions:

The Planning and Development Department will fulfill noticing requirements.

The Clerk of the Board shall provide a copy of the signed ordinances and resolution, and minute order, to Planning and Development, 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. LUDC Ordinance Amendment
4. 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)
5. Planning Commission Action Letter, dated May 11, 2022
6. Planning Commission Staff Report, dated May 3, 2022
7. Planning Commission Memorandum, dated May 4, 2022
8. Planning Commission Memorandum, dated May 6, 2022

Authored by:

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