

Options for Amending Cannabis Regulation and CEQA Notification for State Provisional Licenses

Santa Barbara County
Board of Supervisors
January 29, 2019



Background

- Cannabis land use and business licensing became operational in the inland portion of the County in June 2018
- Coastal Commission confirmed certification on November 7, 2018 of cannabis land use in the Coastal Zone following the Board's acceptance of recommended modifications
- On November 13, 2018, Board requested staff to return with options for amending cannabis regulations to include testing labs on Ag-zoned parcels & other amendments
- Governor Brown signed SB 1459 which creates a Provisional Annual license that requires temp licenses and an annual application that is determined complete other than CEQA

Possible Amendments to Regulations

Possible Amendment	What needs to be changed
1. Allow cannabis testing on agricultural lands	LUDC/Article II/ Chapter 50, Uniform Rules
2. Increase control of cannabis operations on AG-I properties	LUDC
3. Eliminate Ag employee Live Scan requirement and retain for all others	Chapter 50
4. Consider alternative storefront retail allocation methods	Chapter 50
5. Change energy plan review to CSD	Chapter 50
6. Increase authority to reject renewal licenses	Chapter 50
7. Allow generators for security lighting or security cameras	LUDC/Article II

1. Possible Testing in Ag Zone

- *Existing County Regulations*
 - LUDC and Article II do not allow testing on Ag-zoned properties
 - Cannabis manufacturing & distribution are allowed as accessory to cultivation on Ag-zoned properties
- *Area of Concern*
 - Testing is essential for public health of the cannabis supply chain
 - Current operators are driving product across the state for testing
 - Testing facilities need to be consisted with purpose of Ag zoning
- *Options*
 - Option #1 – Allow in existing structures on Ag properties with a CUP and cap
 - Option #2 – Allow in existing or new structures with CUP and cap
 - Option #3 – Maintain existing regulations

2. Controlling Cannabis on AG-1

- *Existing County Regulations*
 - Prohibit outdoor cultivation on AG-I properties within 1,500 feet of a residential zone on lots of 20 acres or less
 - Require a Conditional Use Permit (CUP) for cannabis cultivation that is proposed to be located in, adjacent to, or requires road access within, an EDRN
 - Require a CUP for cultivation located on AG-II lots that are adjacent to an urban-rural boundary
 - Prohibits outdoor cannabis cultivation within two miles of an urban-rural boundary in the Coastal Zone
- *Area of Concern*
 - Indoor or mixed light cultivation in Ag-I zones close to residential areas
- *Options*
 - Option #1 – Amend the specific development standards in the LUDC to establish setbacks for mixed light cultivation;
 - Option #2 – Require a CUP for cultivation on AG-I properties in the LUDC;
 - Option #3 – Ban cultivation on AG-I properties in the LUDC;
 - Option #4 - Maintain existing regulations

3. Eliminate Employee Live Scan

- *Existing County Regulations*
 - Chapter 50 requires all owners, supervisors, employees, and any other person having a 20% or greater interest in the cannabis operation to have a Live Scan criminal background check that does not have a felony prohibited by State law
- *Area of Concern*
 - This requirement exceeds the State's requirement
 - This could affect access to labor
 - Not all County staff is in agreement with amending this provision of Chapter 50
- *Options*
 - Option #1 – Eliminate the Live Scan requirement for employees only;
 - Option #2 – Maintain existing regulations

4. Alternative Allocation of Retail

- *Existing County Regulations*
 - Limits cannabis storefront retail operations to eight countywide with a maximum of two allowed in each supervisorial district
 - Code also establishes a random selection process for pre-qualified applicants
- *Area of Concern*
 - May result in two cannabis storefront retail licenses being issued for one small community and none in another
 - Could create a circumstance of excess concentration and insufficient access for other unincorporated communities
- *Options*
 - Option #1 – Pre-qualify applicants and hold random selection processes for each of six community plan areas (i.e. Orcutt, Los Alamos, Santa Ynez, Eastern Goleta Valley, Isla Vista/Goleta, and a combined Summerland & Toro Canyon) plus two countywide for all sites not in areas covered by any of the six community plans
 - Option #2 – Maintain existing regulations

5. Energy Plan review by CSD

- *Existing County Regulations*
 - Energy Conservation Plans are reviewed, and sufficiency determined, by the Planning & Development Department
- *Area of Concern*
 - Planning & Development Department staff does not have the expertise to review and make the sufficiency determinations on these energy plans
- *Options*
 - Option #1 – Amend County Code § 50-10 to specify the Sustainability Division in the Community Services Department, which already conducts similar evaluations, to conduct the review and sufficiency determination of the Energy Conservation Plans;
 - Option #2 – Maintain existing regulations.

6. More Authority to Reject Renewals

- *Existing County Regulations*
 - Specifies the following reasons for denial of cannabis business license renewals: if the applicant applies for the renewal less than 60 days prior to expiration; if the applicant fails to meet the requirements of Chapter 50; if the applicant is delinquent in paying the requisite cannabis tax; if licenses or land use permits are suspended or revoked; and for any of the reasons for denial of existing licenses that are set forth in County Code § 50-17.
- *Area of Concern*
 - County Code § 50-17 offers criteria that may be used for denial of granting a license or license renewals and County Code § 50-20 offers criteria that shall be used for denial of a renewal. One concern is that the current language does not provide us with strong enough protections against non-compliant operators.
- *Options*
 - Option #1 – Amend County Code § 50-17 to state, “Any application for a cannabis business license shall ~~may~~ be denied . . .”
 - Option #2 – Add additional criteria for denial of applications or renewals to County Code § 50-17 or 50-20;
 - Option #3 - Maintain existing regulations

7. Allow Generators for Security

- *Existing County Regulations*
 - LUDC and Article II prohibit the use of generators for cultivation including lighting of hoop structures
 - Security lighting and 24-hour video monitoring is required by Code § 50-11
- *Area of Concern*
 - On some ag parcels it may be difficult for operators to comply with security requirements without the use of generators
 - Operators would be required to meet the Energy Conservation Plan requirement
 - Allowing for generators is highly likely to require the circulation of a Supplemental Environmental Impact Report
- *Options*
 - Option #1 – Allow generators solely for site security lighting & video
 - Option #2 – Maintain existing regulations

Process & Costs to Amend Regulations

- To amend County Code Chapter 50, Licensing of Cannabis Operations, would require six to eight weeks.
 - Ordinance would become effective 30 days after 2nd reading
 - Staff time for writing and docketing amendments can be accommodated within existing appropriated staff resources
- Amendments to the Land Use and Development Code and Article II require approval by the Planning Commission and the Board of Supervisors.
 - Article II amendments also require certification by the Coastal Commission
 - Work can be included in the upcoming work program for FY 19-20, with work beginning in July, 2019. To accommodate in the current fiscal year, other work that is currently included in the Work Program must be delayed until the next fiscal year

State Provisional Annual Licenses

- The State’s temporary licensing program lapsed on December 31, 2018.
- An Annual Provisional License would be valid for one year from date of issuance. The Provisional Annual license is not renewable. During the year, operators will be required to:
 - Apply for and receive an Annual License from the appropriate State Licensing Authority, which in Santa Barbara County would require them to have also completed the necessary land use permitting and business licensing processes and have valid County permits and licenses; and
 - Record all transactions in the State’s Track and Trace computer system.
- To be eligible to receive a Provisional Annual license from the State, the operator must:
 - Hold or have held a State temporary license for the same site and cannabis activity;
 - Have submitted a complete application, except for compliance with CEQA, for a State annual license;
 - Have CEQA compliance “underway” for the application; and
 - Have a final Lake or Streambed Diversion Agreement (or exemption) issued by the California Department of Fish and Wildlife.

Notification Authority for State Provisional Licenses

- Staff expects to rely on the County's certified Programmatic EIR for the Cannabis regulations for project applications. For some discretionary permits, additional environmental review may be required.
- Staff is recommending that authority be given to the County Executive Office Point of Contact for providing any requested notification to the State licensing authority of evidence of engaging in the permitting and/or licensing with the County **only** if an applicant has either:
 - A permit application accepted for processing by Planning and Development and paid the requisite permit processing fee; or
 - Obtained approval of the land use entitlement application for the proposed cannabis operation and submitted a complete application for the corresponding local cannabis business license.
- Without Provisional Annual licenses, existing cannabis operators not in possession of a local land use entitlement, local cannabis business license, and a State Annual license will have to cease operations upon expiration of their State temporary cannabis licenses.

Recommended Actions

- Review areas for potential amendment to the County's current cannabis permitting and licensing regulations;
- Provide conceptual direction on possible amendments to improve the effectiveness of the cannabis regulatory system; and
- Authorize the County Executive Office to notify State Cannabis Licensing Authorities that compliance with the California Environmental Quality Act (CEQA) is underway for applications for provisional licenses pursuant to California Business and Professions Code Section 26050.2, if:
 - The applicant holds an active State temporary cannabis license;
 - The applicant for a State annual cannabis license has engaged in the land use permitting process by having: (a) a permit application accepted for processing by Planning and Development and paid the requisite permit processing fees; or (b) received the requisite cannabis permit and applied for, but not yet obtained, the corresponding Business License; and
- Determine that the above actions are not a project subject to CEQA review