



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  
**Department No.:** 053  
**For Agenda Of:** July 14, 2020  
**Placement:** Departmental  
**Estimated Time:** 2 hours  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

---

**TO:** Board of Supervisors

**FROM:** Department Lisa Plowman, (805) 568-2086  
Director  
Contact Info: Dan Klemann, (805) 568-2072

**SUBJECT:** Cannabis Ordinance Amendments, Case Nos. 19ORD-00000-00009 and -00011

---

**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 July 14, 2020, the Board of Supervisors (Board) further consider the County Planning Commission's recommended ordinance amendments to the County Land Use and Development Code (LUDC) and the Article II Coastal Zoning Ordinance (Article II), to implement new development standards and permit requirements regarding certain commercial cannabis activities, which the Board previously considered on June 2, 2020, and June 11, 2020. Pursuant to the Board's direction on June 11, 2020, the Board's actions on July 14, 2020, should include the following:

- a) LUDC Amendment (Case No. 19ORD-00000-00009):
  - 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 (EIR) adopted for the Cannabis Land Use Ordinance and Licensing Program (17EIR-00000-00003), 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. 19ORD-00000-00009) 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) adequately describes the activity for the purposes of CEQA pursuant to CEQA Guidelines Section 15168(c)(2); and

- iii) Adopt the ordinance (Case No. 19ORD-00000-00009) to amend the LUDC (Attachment 3).
- b) Provide direction to staff regarding any other amendments to the County’s cannabis regulations, which the Board would like to consider in the future.

**Summary Text:**

On July 16, 2019, the Board directed staff to engage the Planning Commission and return to the Board with the Planning Commission’s recommendations/strategies to mitigate the (1) odor and other impacts of cannabis operations along urban-rural boundaries and (2) conflicts with existing agricultural operations. Pursuant to this direction, staff engaged the Planning Commission and, after conducting five public hearings on this matter, the Planning Commission adopted a resolution recommending that the Board amend the LUDC and Article II Coastal Zoning Ordinance to (1) require a conditional use permit (CUP) for all cannabis cultivation and related on-site processing activities and (2) change the odor control requirements to be aligned with the standards for approval of CUPs.

On June 2, 2020, and June 11, 2020, the Board considered these Planning Commission recommended actions, as well as public comment regarding them, and directed staff to prepare a draft ordinance to amend the LUDC to change the current commercial cannabis zoning regulations that apply to the Inland Area of the unincorporated county, as follows:

- Prohibit commercial cannabis activities within Existing Developed Rural Neighborhoods (EDRNs).
- On lots zoned Agricultural II (AG-II), require a CUP for projects that include a proposed cultivation area that exceeds 51% of the subject lot area.
- Require cannabis cultivation areas to be located a minimum of 50-feet from all lot lines.
- Require processing activities to be located within an enclosed building that utilizes best available technology to control cannabis odors.

Pursuant to the Board’s direction, the new requirements set forth in the proposed ordinance would apply to all commercial cannabis activities except for commercial cannabis activities that are the subject of either an issued permit or a “final approved permit” which would be defined as a permit application that has been:

- (1) approved and the appeal period has expired without an appeal;
- (2) approved on appeal with a final decision rendered by the County on the permit application by the effective date of the LUDC amendments; or
- (3) approved and subject to litigation, which if upheld by the Court would be exempt from the LUDC amendments, but if not upheld by the Court would be subject to the LUDC amendments.

If a commercial cannabis activity is subject to an issued or final approved permit, then the project would not be subject to the proposed ordinance and would be allowed to be implemented pursuant to the requirements of the permit and the regulations that apply to legal nonconforming uses of land (LUDC Chapter 35.101).

The proposed, draft ordinance to implement these changes to the LUDC is included as Attachment 2 to this Board letter. The final ordinance that includes the changes to the LUDC shown in Attachment 2, is included as Attachment 3 to this Board letter.

**Background:**

On July 9, 2019, County Executive Office staff presented a report to the Board on the status of the cannabis regulatory system and actions (if any) the Board could take to address the adverse impacts of commercial cannabis activities. The Board continued the hearing to July 16, 2019, and, after deliberating the matter, took the following action to further address the adverse impacts of commercial cannabis activities:

*Directed staff to engage the Planning Commission and to return to the Board with recommendations/strategies to mitigate the odor and other impacts of cannabis operations along the urban-rural boundary and conflicts with existing agricultural operations. Tools to implement such mitigation could include, but are not limited to, bans, buffers, higher level permitting, grow operations tailored to the urban-rural interface, alternate drying techniques, revisions to Article X and buffer zones or other mechanisms to protect existing agricultural operations (Board July 16, 2019, Action Summary).*

Pursuant to this direction, staff engaged the Planning Commission to review potential amendments to the ordinance and the Planning Commission conducted five public hearings on this matter. As discussed in the Board letter and staff presentation for the June 2, 2020, Board hearing, the Planning Commission considered a wide range of recommendations and strategies in response to the Board's direction. Ultimately, the Planning Commission adopted a resolution recommending that the Board amend the LUDC and Article II Coastal Zoning Ordinance to (1) require a CUP for all cannabis cultivation and related on-site processing activities and (2) change the odor control requirements to be aligned with the standards for approval of the CUPs.

On June 2, 2020, and June 11, 2020, the Board considered the Planning Commission's recommendations and received public testimony concerning the recommendations. After considering the recommendations and public testimony, the Board directed staff to prepare amendments solely to the LUDC in order to change the commercial cannabis zoning regulations that apply to the Inland Area of the unincorporated County, as follows:

- Prohibit commercial cannabis activities within EDRNs. Currently, commercial cannabis activities are allowed within an EDRN subject to the approval of a CUP.
- On lots zoned AG-II, require a CUP for projects that include a proposed cultivation area that exceeds 51% of the subject lot area, rather than a Land Use Permit (LUP) as is currently required for certain projects that are located within the AG-II zone.
- Require outdoor cannabis cultivation areas to be setback a minimum of 50-feet from all lot lines.
- Require processing activities to be located within an enclosed building that utilizes best available technology to control cannabis odors. Currently, processing activities may be located outdoors without the use of such technology, if the project complies with the odor development standard set forth in LUDC Section 35.42.075.C.6 (if applicable).

The new requirements set forth in the proposed ordinance would apply to all commercial cannabis activities except for commercial cannabis activities that are the subject of either an issued permit or a “final approved permit” which would be defined as a permit application that has been:

- (1) approved and the appeal period has expired without an appeal (currently, one application);
- (2) approved on appeal with a final decision rendered by the County on the permit application by the effective date of the LUDC amendments (currently, four applications); or
- (3) approved and subject to litigation, which if upheld by the Court would be exempt from the LUDC amendments, but if not upheld by the Court would be subject to the LUDC amendments (currently, two applications).

If a commercial cannabis activity is subject to an issued or final approved permit, then the project would not be subject to the proposed ordinance and would be allowed to be implemented pursuant to the requirements of the permit and the regulations that apply to legal nonconforming uses of land (LUDC Chapter 35.101).

The proposed ordinance to implement these changes to the LUDC commercial cannabis regulations is included as Attachment 2 to this Board letter. The following items include (1) a summary of the impact of the proposed ordinance on pending commercial cannabis applications and (2) issues that emerged while drafting the ordinance regarding certain details of the new requirements, which require clarification.

#### Impacts of Proposed Ordinance Amendments

- The prohibition on commercial cannabis activities within EDRNs would reduce the amount of land that could be subject to commercial cannabis activities by approximately 25,047 acres/39 square miles (approximately 0.01% of the land area of the county). (See the following website for a map that shows the locations of the EDRNs in the county: <https://sbcopad.maps.arcgis.com/apps/webappviewer/index.html?id=f287d128ab684ba4a87f1b9cff438f91>.) A mixture of zones (e.g., agricultural, residential, and commercial zones) are located within EDRNs. Currently, there are pending land use entitlement applications for 12 commercial cannabis projects within EDRNs, all for cultivation and accessory processing activities. If decision-maker action is taken on one of these projects by the time the proposed ordinance becomes effective—and the permit required for the project qualifies as a “final approved permit,” as defined in the ordinance (Attachment 2) and discussed in this Board letter (above)—then the project would not be subject to the proposed ordinance and would be allowed to be implemented pursuant to the requirements of the permit and the regulations that apply to legal nonconforming uses of land (LUDC Chapter 35.101).
- With regard to the new requirement for lots zoned AG-II, whereby a CUP would be required for projects that include a proposed cultivation area that exceeds 51% of the subject lot area, the Board has the option of using either “net lot area” or “gross lot area” for the purpose of interpreting the new requirement. These terms are defined as follows:

***Lot Area, Gross.** The area included within the boundaries of the lot as described in the latest recorded deed to the lot or as shown on the recorded lot or subdivision map creating*

*the lot, inclusive of any portion so described or mapped, lying within a public or private street.*

***Lot Area, Net.*** *The gross lot area excluding any area lying within a public street which is defined as a permanently reserved right-of-way which has been dedicated to the County (LUDC Section 35.110.020).*

The proposed ordinance (Attachment 2) is currently written to use “gross lot area.” The use of “gross lot area” would avoid potential situations involving disputes over the precise location and size of right-of-way that might need to be excluded from the calculation of “net lot area,” if used. Also, the proposed ordinance is currently written such that the new CUP requirement would be calculated using the cumulative total of all cultivation areas on a lot, if more than one cultivation area is proposed on a lot. For the purposes of interpreting this permit requirement, “cultivation area” would be defined as the area of land in or on which cannabis plants are grown, measured to the perimeter of the planted area and excluding roadways.

Currently there are 11 projects that would be affected by an ordinance amendment requiring a CUP for areas that exceed 51% of the subject lot area. Applicants for these proposed projects would have the option of either (1) submitting a CUP application for these proposed projects; or (2) revising the proposed project descriptions so that the proposed cultivation areas do not exceed 51% of the lot area, thus requiring a LUP for the proposed project. Currently the proposed total (cumulative) amount of cannabis cultivation associated with these 10 proposed projects is approximately 233 acres. If each applicant for these proposed projects reduced each proposed cultivation area by the minimum required such that a LUP rather than a CUP would be required for the proposed project, then it would result in the reduction of proposed cannabis cultivation area by approximately 73 acres.

- With regard to the new requirement to locate cultivation areas a minimum of 50-feet from lot lines, currently there are 48 proposed projects that include at least a portion of a proposed cultivation area within 50-feet of property lines and would be affected by this specific ordinance amendment. The applicants for these proposed projects would be required to revise the proposed project descriptions by removing the proposed cultivation areas out of the 50-foot setback from the lot lines, in order to comply with this new setback requirement.
- With regard to the requirement to locate processing activities within an enclosed building that utilizes best available technology to control cannabis odors, the key purpose of this requirement is to control cannabis odors that are generated during processing activities. Certain operators are proposing odor control techniques and the use of specialized equipment which can purportedly achieve the same or greater level of odor control, than what could be achieved within an enclosed building that utilizes best available technology. For example, certain operators have discussed the possibility of using freeze drying techniques/equipment and immediate packaging of harvested cannabis in the field to control odors. Therefore, the proposed ordinance amendments are written such that—in order to minimize cannabis odors—the drying, curing, and/or trimming of harvested cannabis shall either: (1) be located within an enclosed structure which utilizes best available control technology; or (2) include techniques and/or equipment that shall achieve an equivalent or greater level of odor control as could be achieved using an enclosed structure which utilizes best available control technology.

Currently there are four proposed project applications that include outdoor processing and would be affected by this specific ordinance amendment. Applicants for these proposed projects would be required to revise the proposed project descriptions such that they include either one of the two options to control cannabis processing odors stated above.

The Board may accept, reject, or accept with changes, any of the items addressed above and/or any other item that is addressed in the proposed ordinance.

**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-294 of the County of Santa Barbara Fiscal Year (FY) 2020-21 adopted budget. There are no facilities impacts.

**Special Instructions:**

The Planning and Development Department will fulfill all noticing requirements.

The Clerk of the Board will provide copies of the Minute Order, signed ordinances, and signed resolution to the Planning and Development Department, attention Dan Klemann.

**Attachments:**

1. CEQA and LUDC Findings
2. LUDC Ordinance (Case No. 19ORD-00000-00009)
3. LUDC Ordinance for Adoption

**Authored by:**

Dan Klemann, Deputy Director, Long Range Planning Division