



BOARD OF SUPERVISORS **Agenda Number:**  
AGENDA LETTER

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

**Department Name:** County Executive Office  
**Department No.:** 012  
**For Agenda Of:** July 9, 2019  
**Placement:** Departmental  
**Estimated Time:** 2 hours  
**Continued Item:** No  
**If Yes, date from:** NA  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Mona Miyasato, County Executive Officer

Contact Info: Dennis Bozanich, Deputy County Executive Officer

**SUBJECT: Cannabis Regulatory Program Potential Amendments including Cannabis Business Licenses- Chapter 50 Potential Amendments**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: NA

**Recommended Actions:**

That the Board of Supervisors (Board):

- A. Review areas for potential amendment to the County's current cannabis permitting and licensing regulations;
- B. Provide conceptual direction on possible amendments to Chapter 50 (Licensing of Commercial Cannabis Operations), of the County Code, to improve the effectiveness of the cannabis regulatory system;
- C. Provide any other direction to staff to amend the County's cannabis regulatory program including the County's zoning ordinances;
- D. Determine, pursuant to the California Environmental Quality Act (CEQA) Guidelines 15378(b)(5), that the above actions are not a project subject to CEQA review because they are administrative activities that will not result in direct or indirect physical changes in the environment.

**Summary Text:**

The Board approved ordinances for land use permitting and licensing of commercial cannabis in February and May 2018 respectively, and requested that once the cannabis regulatory system was operational, staff return with possible revisions to improve its effectiveness and address unforeseen issues. The land use entitlement ordinances went into effect in March 2018 in the inland portion of the county and then in November 2018 in the coastal zone. The Business License ordinance took effect in June 2018.

In April 2019, the Board made amendments to Chapter 50. During that amendment process and during the Planning Commission's consideration of amendments to Chapter 35, Zoning, new amendment suggestions were made by members of the public. (The Board is scheduled to consider recommendations by the Planning Commission regarding limitations on cannabis cultivation on AG 1 parcels of less than 20 acres in a separate item on today's Board agenda).

This report identifies additional amendments that the Board may want to consider. Staff is seeking general direction on amendments and will return later, as directed, with amending language for Board consideration.

**Background:**

**General Legal Framework**

California Business and Professions Code § 26200(a)(1) provides that the County may adopt local ordinances to regulate cannabis activities including through “zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses.” Through County Code Chapters 35 and 50, the County established dual permitting and licensing requirements for cannabis operations to legally operate in the County.

The County may further amend its ordinances that regulate cannabis activities. Property owners do not “vest” to existing zoning or anticipated zoning. After receiving a permit and performing substantial work and incurring substantial liabilities in good faith reliance on the permit, though, property owners may acquire a vested right. The County's land use codes also provide “nonconforming use” regulations for the continuation of established land uses that were lawful before later amendments prohibited or further restricted those land uses.

The County cannot adopt another general moratorium on cannabis operations. This is because the County already adopted a general moratorium on cannabis operations in 2017, which was ultimately terminated by the County's adopted cannabis regulatory program. Under Government Code § 65858(e), no further moratorium covering the whole or part of the same property is available after the expiration of the prior moratorium. In addition, the County cannot put a temporary stop or freeze on acceptance of cannabis applications as this would be in effect similar to a moratorium.

The County's zoning ordinances regulate cannabis in both the Inland Zone and Coastal Zone. Any ordinance changes to cannabis-related development in the Coastal Zone generally must first be certified by the California Coastal Commission before taking effect, because these likely would bring a “change in the density or intensity of use of land.” Accordingly, any further odor control ordinance restrictions in the Coastal Zone likely would require Coastal Commission action.

**Possible Amendments**

In April 2019, the Board did make several amendments to Chapter 50. During that amendment process and during the Planning Commission's consideration of amendments of Chapter 35, Zoning, new amendment suggestions were made by members of the public. Of particular concern to the public is the earliest possible compliance with the odor mitigation requirements and some limitation on the amount of cannabis operations.

Staff has identified additional amendment suggestions and options for the Board to consider. Staff seeks general direction on these possible amendments, or others. Staff will return with amendment language or additional information as the Board may direct.

Issue Area	Possible Amendment	County Code section
Cap	1. Countywide cannabis cultivation operations acreage cap	County Code § 50-7
Earlier Odor Control	2. Demonstrate odor control operation during Cannabis Business License application process.	County Code § 50-8(b)(8)
Earlier Odor Control	3. Concurrent processing of Business License Application with an accepted land use entitlement application	County Code § 50-6, 50-8
Eligible List	4. Place operators in the Carpinteria Agricultural Overlay on an “Eligible List” for the 186 acre cultivation cap upon approval of a land use entitlement	County Code § 50-7(a)(2),(d)(1)
Appeals	5. Broaden the definition of Hearing Officer to match County Code Chapter 24A	County Code § 50-2(h)

**1. Limiting cannabis cultivation operations countywide**

*Existing county regulations:* Chapter 50, does not limit cannabis cultivation operations by number or scale other than in the Carpinteria Agricultural Overlay District.

*Area of Concern:* Members of the public have expressed concern over the number of cannabis cultivation sites in operation. The Board may want to consider limitations in areas outside the Carpinteria Agricultural Overlay District to examine the cumulative impacts of cannabis cultivation operations in the County. Additionally or separately, the Board may choose to establish a numeric or acreage cap on cannabis cultivation operations.

*Options for amendments:*

Option #1 – Amend County Code § 50-7 to cap the number of cannabis cultivation operations countywide;

Option #2 – Amend County Code § 50-7 to cap the number of acres of cannabis cultivation countywide while maintaining the established Carpinteria Ag Overlay cap; or

Option #3 - A combination of Options 1-2; or

Option #4 - Maintain existing regulations.

**2. Demonstrate odor control system operations during cannabis Business License application process**

*Existing county regulations:* County Code § 50-25 (a) (3) cannabis Business License operating requirements states that operators must comply with odor control requirements set forth in land

use entitlements based on Chapter 35, Zoning. Cultivators with valid State Provisional Cultivation licenses currently are able to operate without this odor control requirement while they are seeking their county land use entitlement and business license. Odor control is currently required of indoor and mixed light cultivation only.

*Area of Concern:* In the current sequencing, this business license requirement might not be in effect until several weeks after the land use entitlement is issued. Permit approval is taking three to 10 months (depending on the permit type), and with appeals, can take up to an additional three to six months and longer if the appeal goes to the Coastal Commission. Given the amount of public comment on nuisance odors, staff examined options for accelerating the timeframe for requiring odor control for existing and proposed operations. This option, in combination with Option #3 below, would implement odor control much sooner than waiting until the issuance of a Cannabis Business License.

*Options for amendments:*

Option #1 – Add to County Code § 50-8 (b) (8) that cultivators currently growing cannabis demonstrate the effectiveness of the proposed odor control systems *during* the business license application process if the operator holds a State Provisional Cultivation license, and that they will meet the operating requirement of County Code § 50-25 (a) (3) if their cannabis Business License is approved.

Option #2 – Maintain existing regulations.

**3. Concurrent processing of Business License Applications with an accepted land use permit application**

*Existing county regulations:* County Code § 50-8(b)(2)(vii) and 50-8(c) require the submission of the cannabis operation’s land use entitlement (permit) with the Cannabis Business License application.

*Area of Concern:* Applications for land use entitlements can take months for final approval. Processing cannabis Business License applications takes approximately six to eight weeks. During this application review period, the requirement to operate odor control systems is not in full effect. Concurrent review of land use entitlement and business license applications would reduce the amount of time for odor control requirements to become effective.

*Options for amendments:*

Option #1 – Amend County Code § 50-8(b)(2)(vii) and 50-8(c) to require the submission of the cannabis operation’s land use entitlement or evidence that a cannabis land use entitlement application has been accepted for processing by the Planning & Development Department;

Option #2 – Maintain existing regulations.

**4. Place operators in the Carpinteria Agricultural Overlay District on an “Eligible List” for the 186 acre cultivation cap upon approval of a land use entitlement**

*Existing county regulations:* County Code § 50-7 establishes limits on cannabis retail licenses countywide and cannabis cultivation licenses in the Carpinteria Agricultural Overlay District. County Code § 50-7(d)(1) establishes a Cannabis Cultivation License Eligibility List for the purpose of identifying qualified persons and locations for the random selection process. Cannabis

business licenses will only be issued to persons with an approved and issued land use entitlement. Land use entitlements are not issued until all the appeal periods have expired and any filed appeals have been resolved. The cultivation cap in the Carpinteria Agricultural Overlay is administered based on timely compliance with Chapter 50.

*Area of Concern:* The permit review period is currently taking three to 10 months or longer to complete. If a permit decision is appealed, then it is likely to require an additional three to six months to complete that process.

During that period, operators with provisional licenses are allowed to continue to operate as long as they maintain valid State provisional licenses. In theory, new operators could apply and be approved while the appeals are being processed.

This may create a situation where individual operators who began the permit process months ago do not complete the appeals process until after the 186 acre cap is reached. As of the June 21, 2019, there are 201 acres of proposed cannabis operations in the Overlay District for which operators have submitted permit applications. That number has not increased in the last few weeks. Some applicants will fail to make it under the 186 acre cap.

*Options for amendments:*

Option #1 – Amend County Code §50-7 to specify that “approval” of a land use entitlement is “pre-qualifying” for purposes of being placed in order on the Cannabis Cultivation License Eligibility List from which business licenses will be issued;

Option #2 –Maintain existing regulations.

## **5. Broaden the definition of Hearing Officer to match Chapter 24A.**

*Existing county regulations:* County Code § 50-2(h) defines a “Hearing Officer” as a County department executive or manager not involved in the cannabis permitting or licensing. Hearing Officers are used to consider appeals of denial, suspension or revocation of cannabis business licenses.

*Area of Concern:* This may severely limit the pool of eligible hearing officers. Additionally, if there are a large number of appeals, it may overburden that limited pool of eligible senior staff. County Code § 24A-7 (d) defines a role titled alternative hearing examiner which would provide additional individuals to the pool of eligible hearing officers.

*Options for amendments:*

Option #1 – Amend County Code § 50-2(h) to expand who may be used as hearing officers including adding the role of an alternative hearing examiner as defined in County Code § 24A-7(d);

Option #2 – Maintain existing regulations.

## **Other concerns raised**

Other issues have been raised since the implementation of the County’s ordinance. The City of Carpinteria’s letter addressing its concerns are included as an attachment. In general, City’s concerns are generally summarized below:

- **Enforce against the operators who were not “legal non-conforming” operators and lied on their affidavits** - The County is actively enforcing against illegal operators, including cases in which evidence shows the operator falsified documents and perjured themselves on the affidavits. The County is reviewing the permit status of all structures used for cannabis operations and is requiring that they become permitted prior to the issuance of a cannabis land use entitlement.
- **Implement controls for pending County permit applicants with legal nonconforming cannabis cultivation operations to immediately implement odor control systems, lighting plans, and noise plans that meet the County standards** – The staff recommendations described in this report do this for odor control. Staff can evaluate other changes (lighting and noise) that could be implemented during the licensing process as well.
- **Require quarterly monitoring by County staff to ensure ongoing compliance** – Staff will conduct proactive monitoring as recommended by the Planning Commission during a recent cannabis land use permit appeal.
- **Prohibit over concentration of cannabis cultivation in one area** - Placing an overall limit or cap on the amount of cultivation will help limit the amount that can be grown in the County overall.
- **Expand buffers to sensitive receptors** - The existing buffers are 600 feet for nurseries and 750 feet for all other cannabis operations. These buffers are greater than State law. Most of the complaints regarding exposure to sensitive receptors has been regarding odor. Requiring odor control systems for mixed-light cultivation during the business license process should help mitigate the issue. With the addition of proactive monitoring, staff will be able to compel operators to reduce odor for sensitive receptors and residential neighborhoods.
- **Regulate hemp** - Pursuant to current State law, hemp like other agricultural crops, may not be regulated. The land use and business license regulations allowed for cannabis cultivation are prohibited by State law for hemp cultivation. Senate Bill (SB) 153 may be amended to allow for local control of where cannabis cultivation could occur. The County has taken an “oppose unless amended” position to include an allowance for local control of hemp.

### **Process and Cost to Amend Cannabis Regulations**

Chapter 50 can be amended by the Board of Supervisors by ordinance, which will require two readings of the ordinance at the Board and approval by the Board in open session. With Board direction today, writing and docketing the first reading of an ordinance to amend County Code Chapter 50, Licensing of Cannabis Operations, would allow a Set Hearing Notice on August 13, 2019, introduction of the ordinance (first reading) on August 20, 2019 and possible adoption (second reading) on August 27, 2019. If adopted by the Board at the second reading, the ordinance would become effective 30 days later, unless otherwise directed. Staff time for writing and docketing amendments can be accommodated within existing appropriated staff resources.

### **Status of State Cannabis Licenses and CEQA**

As of July 1, 2019, only 10 active State temporary cannabis cultivation licenses remain in Santa Barbara County. All of these will become inactive by July 27, 2019. As of that same date, there are

669 active State provisional annual cultivation and nursery licenses in the county. The total of 679 active State licenses is now less than are active in Humboldt County (n=829.) Of significant note, all 829 of Humboldt County’s licenses equate to slightly over 237 acres countywide. Santa Barbara County’s 679 licenses equal just under 156 acres countywide. That 156 acres of active State licenses (Mature flowering plants) is 0.02% of all agriculturally zoned property in Santa Barbara County. All of Santa Barbara County’s active State temporary and provisional licenses are held by 52 unique operators and exist on 52 parcels countywide. By contrast, Humboldt’s active licenses are held by 454 unique operators.

It is important to note that State provisional annual licenses are not exempt from CEQA. The State provisional license requires a local determination that CEQA analysis is “underway.” The recently approved budget trailer bill (SB97) amended some cannabis statutes but did not change this CEQA “underway” provision. CEQA is required to be completed prior to issuance of a State regular cannabis license. The use of “underway” rather than “completed” by the State is likely because many jurisdictions did not complete an Environmental Impact Report prior to launching their programs. For Santa Barbara County, CEQA analysis was completed through a Programmatic Environmental Impact Report that was approved by the Board in 2018. Additionally, for every cannabis land use permit application, there is site-specific CEQA review, using a checklist consistent with the requirements of the CEQA guidelines. During this site-specific CEQA review, additional permit or license requirements consistent with the CEQA analysis will be required, or the permit will not be issued.

**Performance Measure:**

NA

**Contract Renewals and Performance Outcomes:**

NA

**Fiscal and Facilities Impacts:**

**Budgeted:** Yes, for developing potential amendments to the cannabis licensing program.

**Fiscal Analysis:**

<b><u>Funding Sources</u></b>	<b><u>Current FY Cost:</u></b>	<b><u>Annualized On-going Cost:</u></b>	<b><u>Total One-Time Project Cost</u></b>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

**Narrative:** Staff time for writing and docketing amendments to Chapter 50 can be accommodated within existing appropriated CEO staff resources.

**Key Contract Risks:**

NA

**Staffing Impacts:** NA

**Special Instructions:**

**Attachments:**

Attachment A – City of Carpinteria Letter and Resolution – June 24, 2019

**Authored by:** Dennis Bozanich, Deputy County Executive Officer, 805-568-3400