



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: January 29, 2019
Placement: Departmental
Estimated Time: 90 minutes
Continued Item: No
If Yes, date from: NA
Vote Required: Majority

TO: Board of Supervisors
FROM: Mona Miyasato, County Executive Officer
Dianne Black, Director, Planning & Development Department
Contact Info: Dennis Bozanich, Deputy County Executive Officer
SUBJECT: **Options for Cannabis Regulatory Amendments and Authorization of CEQA Compliance for State Provisional Annual Licenses**

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, as previously requested by the Board;
- B. Provide conceptual direction on possible amendments to Chapter 35, Section 35-1 [Land Use and Development Code (LUDC)], Article II [Coastal Zoning Ordinance (Article II)], and the Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones, as well as Chapter 50 (Licensing of Commercial Cannabis Operations), of the County Code, to improve the effectiveness of the cannabis regulatory system; and.
- C. 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:
 1. The applicant holds an active State temporary cannabis license for the same site and cannabis activity which are the subject of the State Provisional Annual cannabis license application;
 2. The applicant for a State annual cannabis license has engaged in the land use permitting process set forth in the LUDC or Article II (as applicable) 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

- 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. Specifically, at the November 13, 2018, Board hearing, the Board requested that staff return with options for allowing testing labs on agriculturally zoned properties. This report also identifies a small set of additional amendments that, based on the past several months of experience, would improve the system. Staff is seeking general direction on amendments and would return later, as directed, with amending language for Board consideration.

In addition, staff is seeking authority to address State Provisional Licenses. The Governor signed Senate Bill (SB) 1459 in September 2018. SB 1459 creates a State Provisional Annual License to replace the now expired State temporary licensing program for cannabis operations. Operators that have existing active State temporary cannabis licenses are eligible to receive a Provisional Annual license if CEQA compliance is “underway” and all other State Annual license requirements have been met. The Board has the option to authorize the County Executive Office to provide notification to State Licensing Authorities if the applicant has a permit application accepted for processing by Planning and Development and paid the requisite permit processing fees, or has received their land use permit and are awaiting business licensing, and paid all required fees.

Background:

Possible Amendments

At the November 13, 2018 Board hearing, the Board directed staff to return with possible amendments to existing commercial cannabis regulations in the unincorporated area of Santa Barbara County. Particular interest was expressed for allowing cannabis-testing labs on agriculturally zoned properties to provide more opportunities for this segment of the licensed supply chain. Staff has identified several 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.

Possible Amendment	What needs amending?
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. Allow cannabis testing on agricultural lands

Existing county regulations: The LUDC and Article II do not allow cannabis testing on agriculturally zoned lots. Cannabis distribution and manufacturing activities are permissible, but subject to certain standards to ensure that the distribution and manufacturing activities are accessory to cannabis cultivation that occurs on the same lot where the distribution and manufacturing activities occur.

Area of Concern: Testing facilities for cannabis are essential for the licensed cannabis supply chain. All cannabis products (flowers or edibles) must be tested in the interest of public health. Very few commercial or industrial parcels exist in the unincorporated area. Testing licensees cannot hold any other cannabis licenses. Currently, operators are trucking product to northern California or the desert near Palm Springs for distribution and testing.

Any amendments to allow testing facilities on agriculturally zoned lots must be designed to ensure that the testing facilities are consistent with the stated purpose and objective of the agricultural zones in which they would be allowed. Amendments to allow testing on agriculturally zoned land would also require amendments to the County’s Uniform Rules for Agricultural Preserves to consider testing facilities on contracted lands.

Options for amendments: Option #1 - Allow testing on agricultural-zoned properties only in existing agricultural structures with a Conditional Use Permit (CUP) and provide for a cap (by amending Chapter 50) on the number of testing facilities in the Business License Ordinance; Option #2 – Allow in existing and new structures with a CUP; and provide a cap on the number of testing facilities in the Business License Ordinance; Option 3 - Maintain existing regulations.

2. Controlling cannabis operations on AG-I properties adjoining rural/urban lines

Existing county regulations: The LUDC and Article II prohibit outdoor cultivation on AG-I properties within 1,500 feet of a residential zone, school, day care center, or youth center, on lots of 20 acres or less and on lots zoned AG-I-5 and AG-I-10. The regulations also require a Conditional Use Permit (CUP) for cannabis cultivation that is proposed to be located in, located adjacent to, or requires the use of a roadway that is the sole means of access to the cannabis site and is located within, an Existing Developed Rural Neighborhood (EDRN). The LUDC and Article II require a CUP for cultivation located on AG-II lots that are adjacent to an urban-rural boundary. Finally, Article II prohibits outdoor cannabis cultivation within two miles of an urban-rural boundary.

Area of Concern: Residents and others have expressed concerns about indoor or mixed light cannabis cultivation in Agricultural I zones close to residential areas, including incompatible structures, odor, lighting, and traffic.

Options for amendments: 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 Ag employee Live Scan requirement and retain for all others

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 of requiring all employees to go through Live Scan exceeds the State’s requirement and cannabis cultivators believe this could affect access to laborers, who

may have concerns regarding federal immigration enforcement even if they are documented workers with no felony convictions. Not all County staff is in agreement with amending this provision of Chapter 50.

Options for amendments: Option #1 – Eliminate the Live Scan requirement for employees only; Option #2 – Maintain existing regulations.

4. Consider alternative methods for allocating storefront retail

Existing county regulations: County Code § 50-7 limits cannabis storefront retail operations to eight countywide with a maximum of two allowed in each supervisorial district. County Code § 50-7 also establishes a random selection process for pre-qualified applicants.

Area of Concern: The random selection process may result in two cannabis storefront retail licenses being issued for one small community and none in another. This could create a circumstance of excess concentration and insufficient access for other unincorporated communities.

Options for amendments: 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 not covered by the six community plans. Two other community plans (Montecito and Mission Canyon) were not included because they do not contain properties with the appropriately required zoning or appropriately zoned properties prohibit this activity because they are within sensitive receptor buffer areas; Option #2 – Maintain existing regulations.

5. Change energy plan review to CSD

Existing county regulations: County Code § 50-10 has the Planning & Development Department reviewing and determining the sufficiency of an applicant’s Energy Conservation Plan.

Area of Concern: Planning & Development Department staff does not have the expertise to review and make the sufficiency determinations on these energy plans.

Options for amendments: 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. Increase authority to reject renewals

Existing county regulations: County Code § 50-20 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 for amendments: 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. Generators for security lighting and/or security cameras

Existing county regulations: The LUDC and Article II prohibit the use of generators for cultivation including lighting of hoop structures except for emergency or power outages. The regulations also anticipate the need for security lighting and that it shall be motion-based and not adversely affect other properties surrounding the cannabis operation. County Code § 50-11 requires a Site Security Plan that includes 24-hour video monitoring.

Area of Concern: On agricultural parcels with no utility-provided electrical service, generators may be used by other agricultural operations to run pumps and other farm equipment. It may be difficult for operators to comply with security requirements without the use of generators. These cannabis 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 to evaluate the significance of the impact prior to considering the creation of an amendment.

Options for amendments: Option #1 – Allow generators only for powering security lighting and cameras; Option #2 – Maintain existing regulations.

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 require six to eight weeks. Then 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.

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.

Based upon the amendments addressed in this Board Agenda letter, it is anticipated that the amendments to:

- (1) allow testing labs on agricultural lands with certain restrictions (item 1, above) and (2) limit cannabis operations on AG-I properties adjoining rural/urban lines (item 2, above), could be processed by either using, or preparing an addendum to, the existing programmatic environmental impact report (PEIR) that was prepared for the existing cannabis zoning and licensing regulations; and
- allow the use of generators for security lighting and/or security cameras (item 7, above) would present new environmental impacts that were not disclosed in the PEIR, thus warranting the preparation of a subsequent negative declaration or environmental impact report.

The following table summarizes the estimated FTEs, consultant costs, and time to complete the amendments, based on whether they are processed concurrently. The estimated processing times include both the time to locally adopt amendments and the time to complete the Coastal Commission certification process.

Proposed Amendment	Estimated Labor (FTEs)	Estimated Consultant Costs	Estimated Processing Time (Weeks)	Notes
Cannabis testing on agricultural lands	0.3	--	34 (County) 84 (CCC)	
Controlling cannabis operations on AG-I properties	0.2	--	32	Approximately 0.1 FTE less, if processed with the amendments to allow cannabis testing on agricultural lands.
Generators for security lighting and/or security cameras	0.3	\$85,000	59 (County) 109 (CCC)	Approximately 0.1 FTE less, if processed with either one or both of the amendments listed above.
Estimated Totals	0.2-0.7	\$85,000	32-109	

This work can be included in the upcoming work program for FY 19-20, with work beginning in July, 2019. Alternatively, to accommodate this additional work in the current fiscal year, other work that is currently included in the Work Program must be delayed until the next fiscal year since this project is not in the current work program and staff are fully subscribed to other work. Based upon the specific requirements for, and current progress on, each item that is included in the current Work Program, staff recommends that one of the following items be delayed to accommodate the additional work this fiscal year:

- Agricultural Tiered Permitting Project – 0.7 FTE
- Short-Term Rentals Article II Amendments – 0.5 FTE

If the Board decides to pursue any one or combination of the cannabis ordinance amendments discussed above, the Board should indicate which existing Work Program item listed above should be delayed to accommodate the additional work. If the Board’s direction includes the use of generators for lighting and security, staff also estimates consultant costs for environmental review of \$85,000, which is not included in the current FY budget (unless reallocated from the Agricultural Tiered Permitting Project).

Notification Authority for State Provisional Licenses

On September 26, 2018, Governor Brown signed SB 1459 that created a Provisional Annual license for cannabis operators. 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.

For an operator to receive a Provisional Annual license from the State CalCannabis, 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.

Most temporary licenses in Santa Barbara County will expire in March 2019. New operators without temporary licenses are not eligible for Provisional Annual Licenses since they do not possess (or did not possess) temporary licenses. They will have to complete the County’s land use permitting and business licensing processes and seek a (regular) Annual License.

State licensing agencies will likely be asking the Points of Contact (POC) for each jurisdiction to notify them that CEQA compliance review is “underway” for the cannabis operation that is the subject of the application for a Provisional Annual License. Since based on County Code Chapter 35, Article X, only medical cannabis cultivators were eligible to obtain temporary licenses from the State, they are the only cannabis operators in the County that may be eligible for a provisional state license. CalCannabis has defined CEQA underway as:

- a project-specific document is being prepared, which may be demonstrated through the issuance of a Notice of Preparation (an official document stating an EIR will be prepared), early referral consultations, or a contract with a consultant to produce a document;
- the applicant is located in a county or city that has—or is working toward—a program CEQA document **and** the applicant has evidence he or she is engaged in the permitting process with his or her local agency; **or**
- the applicant is located in a county or city that requires a permit issued through a discretionary review process **and** the applicant has evidence he or she is engaged in the permitting process with his or her local agency.

For most applications in Santa Barbara County, 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) A permit application accepted for processing by Planning and Development and paid the requisite permit processing fee; or
- b) 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. Currently, no existing cannabis operators have obtained a local land use entitlement, a local cannabis business license and a State Annual license.

For State Annual Licenses, the County Executive Office was previously designated by the Board as the Point of Contact for any requested notifications pursuant to Business and Professions Code section 26055(g). Accordingly, the CEO Point of Contract will inform the State if the proposed applicant has

obtained a County land use entitlement and a county cannabis business licenses and therefore is compliant with local law or is not.

Performance Measure:

NA

Contract Renewals and Performance Outcomes:

NA

Fiscal and Facilities Impacts:

Budgeted: Yes, for developing potential amendments to the cannabis licensing program, but not budgeted (not included in the Long Range Planning Division’s work plan) for potential amendments to the LUDC and Article II.

Fiscal Analysis:

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

Narrative: Staff time for writing and docketing amendments to Chapter 50 or notifying State Licensing Authorities on applicant CEQA status can be accommodated within existing appropriated CEO staff resources. However, changes to the LUDC and Article II are not in the current Planning & Development’s budget or Long Range Planning work plan and would require delaying a budgeted project, as well as additional funds for consultant work (\$85,000) as discussed above.

Key Contract Risks:

NA

Staffing Impacts: NA

Special Instructions:

Attachments:

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