



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 & Development
Department No.: 053
For Agenda Of: May 8, 2018
Placement: Administration
Estimated Time: N/A
Continued Item: N/A
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Dianne M. Black, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
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SUBJECT: The Right to Farm Ordinance

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Make the required findings for approval of amendments to the Right to Farm Ordinance, including California Environmental Quality Act (CEQA) findings (Attachment 1);
- b) Consider the adoption (Second Reading) of an Ordinance (Case No. 18ORD-00000-00008) of the Board of Supervisors of the County of Santa Barbara amending Section 3-23 of the Santa Barbara County Code, the Right to Farm Ordinance, to address cannabis (Attachment 2);
- c) Determine for the purposes of CEQA that:
 - i. Approval of the amendment to the Right to Farm Ordinance (Case No. 18ORD-00000-00008) is within the scope of the Cannabis Land Use Ordinance and Licensing Program, and the Cannabis Land Use Ordinance and Licensing Program Final Programmatic Environmental Impact Report (PEIR) (Case No. 17EIR-00000-00003, State Clearinghouse No. 2017071016) (Attachment 3) adequately describes this activity for the purposes of CEQA; and

- ii. Pursuant to CEQA Guidelines section 15162(a), after considering the PEIR certified by the Board of Supervisors on February 6, 2018, that no subsequent EIR or Negative Declaration is required because: i) no substantial changes are proposed which require major revisions of the PEIR; ii) no substantial changes have occurred with respect to the circumstances under which the ordinance is undertaken which require major revisions of the PEIR; and iii) no new information of substantial importance concerning the ordinance's significant effects or mitigation measures, which was not known and could not have been known with the exercise of reasonable diligence at the time that the PEIR was certified, has been received.

Summary Text:

On March 20, 2018, the Board directed staff to return with amendments to Section 3-23 of the County Code, the Right to Farm Ordinance, to incorporate language that would ensure that cannabis cultivation and other related activities would not be afforded the same nuisance protections as other agricultural crops in the County.

On May 1, 2018, the Board held the first reading of the ordinance and read the title "An Ordinance Amending Section 3-23, Agricultural Nuisances and Consumer Information, of Article V, the Right to Farm, of Chapter 3, Agriculture, of the County Code to Exclude Cannabis from the Protections of the Ordinance, and Make Other Minor Clarifications, Corrections, and Revisions" and waived reading of the Ordinance in full.

Discussion:

Right to Farm

The Board directed staff to amend Section 3-23 of the County Code, the Right to Farm Ordinance. California passed the Right to Farm Act (Act) in 1981 to protect farmers from public nuisance concerns. The statute specifically states that it prevails over any contrary provision of a city or county ordinance or regulation, but allows cities and counties to require disclosures to be given to prospective home buyers that a dwelling is near an agricultural operation or agriculturally zoned land. While the law does not convey unlimited rights to agricultural businesses to conduct operations in any desired manner, the Act provides that a farming activity cannot be a public nuisance if all the following factors are met (Civil Code § 3482.5(a)(1) and 3482.6(a)):

- The agricultural activity is conducted or maintained for commercial purposes;
- The activity is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in the same locality;
- The farming activity must have been in operation for at least 3 years; and
- The farming activity was not a nuisance at the time it began.

Santa Barbara County adopted a local right to farm ordinance in 1989 (Ordinance No. 3778). Section 3-23(d) of the County's Right to Farm Ordinance states the following, consistent with the Right to Farm Act:

No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to

any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.

With the possible exception of legal nonconforming medicinal cultivation sites, most cannabis activities would not meet the three-year threshold requirement for protection from being determined a “nuisance” given that, to date, they have been impermissible in the County.

Furthermore, even if a cannabis cultivation site has been in operation for greater than three years and was not a nuisance at the time it began, there are other features of cannabis cultivation that make it inappropriate to be considered an agricultural use that is subject to the protections of the Right to Farm Ordinance. More specifically, given its status as a controlled substance, the cultivation of cannabis involves potential adverse effects that differ from the cultivation of other types of crops (e.g., criminal activity). Consequently, both the land use ordinances and the business licensing ordinance treat cannabis activities as subject to nuisance actions. The cannabis land use regulations adopted on February 27, 2018, include a number of development standards and permitting requirements to avoid or mitigate these adverse effects, which are not required for the cultivation of other types of crops on agricultural lands. In addition, the State does not tax other agricultural products in the manner that cannabis is taxed, and the County does not tax other agricultural products in the manner that cannabis would be taxed if the voters approve a local tax on cannabis.

Therefore, Attachment 2 amends the Right to Farm Ordinance to explicitly exclude cannabis as a type of agricultural use that is subject to the protections set forth in the Right to Farm Ordinance, as directed by the Board on March 20, 2018.

Environmental Review

The Cannabis Land Use Ordinance and Licensing Program Final PEIR, (Attachment 3), was certified on February 6, 2018. The amendments to the Right to Farm Ordinance described in this Board Letter (Attachments 2) are adequately covered by the Program EIR.

Fiscal Analysis

The fiscal impacts associated with the cannabis land use ordinances are described in the Board Letter dated February 6, 2018. No additional impacts would result from the changes proposed under this action (18ORD-00000-00008).

Attachments:

1. Findings for Approval
2. Ordinance amending Section 3-23 of the County Code, the Right to Farm Ordinance (Case No. 18ORD-00000-00008)
3. Link to Final Program Environmental Impact Report and Revision Letter (Case No. 17EIR-00000-00003 and RV 01)

Authored by:

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