



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: June 2, 2020
Placement: Departmental
Estimated Time: 3 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

Other Concurrence: N/A

As to form: Select_Concurrence

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions: That on June 2, 2020, the Board of Supervisors (Board) consider County Planning Commission-recommended ordinances to amend 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. Pursuant to the Planning Commission's recommendation, the Board's actions 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) (Attachment 2), 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) (Attachment 2) 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, which is included as Attachment 3 to this Board letter.
- b) Article II Amendment (Case No. 19ORD-00000-00011):
- i) Make the required findings for approval, including CEQA findings (Attachment 1);
 - ii) Pursuant to CEQA Guidelines Section 15265, find that the preparation, approval, and certification of a Local Coastal Program Amendment (LCPA) is exempt from the requirements of CEQA because the California Coastal Commission's (Coastal Commission's) review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA (Public Resources Code Sections 21080.5 and 21080.9);
 - iii) Adopt the ordinance (Case No. 19ORD-00000-00011) to amend Article II, which is included as Attachment 4 to this Board letter;
 - iv) Adopt a resolution authorizing submittal of the Cannabis Ordinance Amendment to the Coastal Commission for certification as an amendment to the Santa Barbara County Local Coastal Program (Attachment 5); and
 - v) Direct the Planning and Development Department to transmit the adopted resolution to the Executive Director of the Coastal Commission.
- c) Provide direction to staff regarding any other amendments to the County's cannabis regulations, which the Board of Supervisors 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 four public hearings on this matter, the Planning Commission adopted a resolution (Attachment 6) recommending that the Board:

- (a) Amend the LUDC and Article II Coastal Zoning Ordinance to require a conditional use permit (CUP) for all cannabis cultivation and related on-site processing activities; and
- (b) Amend Section 35.42.075.C.6 of the LUDC and Section 35-144U.C.6 of the Article II Coastal Zoning Ordinance to change the development standard for odor abatement plans for cannabis activities such that—rather than preventing odors from being experienced solely within residential zones, as is currently the case—odors generated by cannabis activities: (1) would not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood; and (b) would be compatible with the surrounding area. By making this change to the development standard for odor abatement plans, the Planning Commission's recommended odor control requirements would be aligned with the standards for approval of the CUPs that would be required for cannabis cultivation and related on-site processing activities.

This Board letter summarizes the Planning Commission's considerations in response to the Board's direction, sets forth the Planning Commission's recommendations, and provides options to the Board in the event that the Board does not decide to follow the Planning Commission's recommendations.

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 four public hearings on this matter. Given the relatively broad direction from the Board and numerous policy options available to the Planning Commission, the Planning Commission initiated the hearings using a "workshop" style format at which the Planning Commission received a report from Long Range Planning Division staff and public testimony and, based on the information received, formulated policy options which were considered further during the subsequent hearings.

In addition to the report on policy options from the Long Range Planning Division staff, the Planning Commission received a report from Ms. Cathy Fisher, the Agricultural Commissioner, regarding the activities of the "Ag/Cannabis Stakeholder Working Group" that Ms. Fisher assembled (Attachment 10). Ms. Fisher summarized the activities and guidance that the Ag/Cannabis Stakeholder Working Group developed in order to address incompatibilities that occur when pest control and certain types of agricultural activities occur within proximity to cannabis cultivation sites.

The Planning Commission also requested and received a report from Mr. Barney Melekian, Assistant County Executive Officer, regarding the status of cannabis business licensing and requirements set forth in the Chapter 50 Cannabis Business Licensing Ordinance that are intended to address the adverse impacts of cannabis activities (e.g., odor control) (Attachment 10).

The staff reports, public testimony, and Planning Commissioners' deliberations resulted in a number of policy and administrative procedural options for the Planning Commission's consideration. See Attachment 7 which includes the staff reports that summarize, and Attachment 8 which includes public testimony regarding, the policy and administrative procedural options that the Planning Commission considered. The policy options and other ideas can be categorized generally as follows:

- Changes to permitting requirements, such as:

- Develop a zoning overlay or “buffer” to identify areas located within proximity to sensitive receptors, in which cannabis activities would require a CUP versus a Land Use Permit (LUP) or Coastal Development Permit (CDP)
- Different permitting requirements for cannabis activities located within a certain distance from urbanized areas
- Requiring a CUP for outdoor cultivation and a LUP/CDP for indoor cultivation
- Banning at least certain commercial cannabis activities (e.g., outdoor cultivation or processing)
- Adopt additional development standards for cannabis activities, including:
 - Increased or new setbacks from sensitive receptors and other incompatible uses (e.g., setbacks from cultivated areas on adjacent lots where pesticide applications occur)
 - Limitations (“caps”) on cannabis activities by the size, number, types of activities, and/or location (e.g., per legal lot)
 - Changes to strengthen odor control requirements (e.g., prohibit outdoor cultivation, require on-site odor-generating drying/processing activities to be conducted in an enclosed, conditioned space with carbon filtration or best available control technology, and require best practices for odor control as part of permit conditions)

The Board can consider the full range of amendments that the Planning Commission considered, including items that were not recommended for action.

Although some of the Planning Commissioners expressed a desire to continue considering some of the other policy options and ideas presented during the hearings, the Planning Commission moved to adopt a resolution (Attachment 6) thereby recommending that the Board (1) require a CUP for all cannabis cultivation and on site processing and (2) modify the odor control standards to ensure cannabis operations are compatible with surrounding areas. More specifically, the Commission is recommending that the Board take the following actions at this time:

- (a) amend the LUDC and Article II to require a CUP for all cannabis cultivation and related on site processing activities; and
- (b) amend the odor abatement plan development standard set forth in Section 35.42.075.C.6 of the LUDC and Section 35-144U.C.6 of the Article II Coastal Zoning Ordinance to:
 - (1) delete: “...No odor abatement plan shall be required in AG-II zoning, unless a CUP is required. The Odor Abatement Plan must prevent odors from being experienced within residential zones, as determined by the Director...;” and
 - (2) amend the development standard such that odors generated by cannabis activities: (a) will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood; and (b) will be compatible with the surrounding area.

Attachments 3 and 4 include the draft ordinances that set forth the changes to the LUDC and Article II (respectively) that the Planning Commission is recommending that the Board adopt.

The change to require a CUP for all cannabis cultivation and related on-site processing activities would affect the permitting requirements for cannabis cultivation and related on-site processing activities that

would be located within the Agriculture I (AG-I) zone in the Coastal Zone, and the Agriculture II (AG-II) zone in the Inland area and Coastal Zone.

In the AG-I zone in the Inland area of the county, commercial cannabis activities would continue to be prohibited on AG-I lots that are less than 20 acres in size and would continue to require a CUP on lots that are 20 acres or greater in size. Therefore, the recommended amendments would not change the permitting requirements for cannabis activities within the AG-I zone. However, in the AG-I zone in the Coastal Zone: all cultivation would change from a principally permitted use (requiring a CDP) that is not appealable to the Coastal Commission, to a conditionally-permitted use (requiring a CUP) that is appealable to the Coastal Commission; and distribution and nonvolatile manufacturing would change from permitted uses (requiring a CDP) to conditionally-permitted uses, and would continue to be appealable to the Coastal Commission.

In the AG-II zone in the Inland area only, certain cannabis cultivation and related on-site processing activities currently require a CUP (e.g., when the project site is located on a lot within an existing developed rural neighborhood). The Planning Commission’s recommendation would require a CUP for all cannabis cultivation and related on-site processing activities. Furthermore, in the AG-II zone in the Coastal Zone: all cultivation would change from a principally permitted use, to a conditionally-permitted use that is appealable to the Coastal Commission; and distribution and nonvolatile manufacturing would change from permitted uses (requiring a CDP that is appealable to the Coastal Commission) to conditionally-permitted uses (requiring a CUP), and would continue to be appealable to the Coastal Commission. The following table summarizes the Planning Commission’s recommended changes to the permitting requirements for cultivation and related on-site processing activities.

Planning Commission-Recommended Changes to Permitting Requirements for Cannabis Cultivation and On-Site Processing

Zone	Activity	Inland Area		Coastal Zone	
		Existing	Recommended	Existing	Recommended
AG-I	Cultivation	< 20 acres – prohibited ≥ 20 acres – CUP	No change	PP	CUP
	Distribution			P	
	Processing			P	
AG-II	Cultivation	P or CUP, depending on location and use of roadways	CUP	PP	CUP
	Distribution			P	
	Processing			P	

P = Land Use Permit (Inland area) or Coastal Development Permit (Coastal Zone, appealable to the Coastal Commission)
 PP = Coastal Development Permit (Coastal Zone, not appealable to the Coastal Commission)
 CUP = Conditional Use Permit (Inland area; Coastal Zone, appealable to the Coastal Commission)

With regard to odor control, the Planning Commission’s recommendation to change the odor control standards was driven by a desire to tailor the type and amount of odor control given project-specific considerations and by the Planning Commission’s recommendation to require a CUP for all cannabis cultivation and related on-site processing. The Planning Commission found that the existing lack of an odor control requirement for most cannabis activities within the AG-II zone to be problematic, given certain AG-II-designated properties’ proximity to sensitive receptors/activities (e.g., EDRNs or wine tasting rooms). In addition, the Planning Commission found the existing standard whereby odors cannot be experienced within a residential zone (as determined by the Planning Director) to be too limiting, as it did not protect sensitive receptors that are located in nonresidential zones (e.g., occupants of residences

on AG-II-designated properties). Therefore, the Planning Commission recommended that the development standard for odor control be changed to account for impacts to all possible sensitive receptors to odors, using the standards for approval of a CUP which require consideration of a proposed project's impacts on the neighborhood and/or surrounding area. The new development standard would require decision-makers to determine the requisite amount and type of odor control based on the proposed type of cannabis activity, manner in which the cannabis activity would be conducted (e.g., indoor or outdoor), odor-generating activities' (e.g., on-site drying or freezing) proximity to sensitive receptors surrounding the project site, site-specific meteorological conditions and topography, etc., using the discretion that would be afforded to decision-makers when considering the findings for approval of the CUP that would be required for the proposed project.

The amendments to the LUDC would take effect 30 days after Board adoption. The amendments to Article II would take effect upon completion of the Coastal Commission certification process, which can take up to 15 months after Board adoption to complete. After the respective ordinance takes effect, projects for which land use permits (1) have not been issued or (2) have been issued yet the permittees have not conducted substantial work and incurred substantial liabilities in good faith reliance on the permits, would be subject to the new permitting and odor control requirements. As of May 19, 2020, there are 241 permit applications on which a decision is pending or are approved (but not issued), and 28 permit applications that have been issued. Cannabis activities that are the subject of an issued LUP or CDP and are vested, would become legal nonconforming based on their noncompliance with the new permitting requirements and, possibly in certain cases, the new odor control requirements.

Government Code Section 65356(a) states that the Board (as the legislative body for the unincorporated County) may approve, modify, or disapprove the recommendations of the Planning Commission. However, any substantial modification that the Board proposes which the Planning Commission did not previously consider, must first be referred to the Planning Commission for its recommendations before the Board can act on it. As stated in this Board letter above, the Planning Commission considered a number of policy options but decided to recommend only the limited amendments described above at this time. If the Board decides to modify the Planning Commission's recommended amendments, staff will advise the Board on whether the Planning Commission previously considered the modification and, consequently, whether it needs to be sent to the Planning Commission for consideration and recommendations to the Board.

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-269 of the County of Santa Barbara Fiscal Year (FY) 2019-20 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, LUDC, and Article II Findings
2. Link to the PEIR
3. LUDC Ordinance (Case No. 19ORD-00000-00009)
4. Article II Ordinance (Case No. 19ORD-00000-00011)
5. Resolution Authorizing Submittal of the Cannabis Ordinance Amendments to the Coastal Commission
6. Planning Commission Resolution 20-01
7. Planning Commission Hearings - Staff Reports
8. Planning Commission Hearings - Public Comment
9. Agricultural Commissioner's Presentation
10. Assistant CEO Presentation

Authored by:

Dan Klemann, Deputy Director, Long Range Planning Division