



**BOARD OF SUPERVISORS  
AGENDA LETTER**

Agenda Number:

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

**Department Name:** Planning & Development  
**Department No.:** 053  
**For Agenda Of:** 10/03/2017  
**Placement:** Set hearing  
**Estimated Tme:** 90 minutes on 10/17/2017  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Department Director: Glenn S. Russell, Ph.D. Planning and Development Department  
(805) 568-2085  
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning Division  
(805) 568-2086  
**SUBJECT:** Medical Marijuana Nonconforming Status Determination and Amortization Ordinance  
Amendment

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**County Counsel Concurrence**  
As to form: Yes

**Auditor-Controller Concurrence**  
As to form: N/A

**Other Concurrences:** N/A

**Recommended Actions:**

On October 3, 2017, set a hearing for October 17, 2017, to consider the recommendations of the County Planning Commission to approve Case No. 17ORD-00000-00007 which would amend Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code to terminate the exemption from the prohibition of medical marijuana cultivation for medical marijuana cultivation locations that existed as of January 19, 2016, and to include a process to determine whether such medical marijuana cultivation locations are considered as legal, nonconforming operations.

On October 17, 2017, the Board of Supervisor (Board) should take the following actions:

- a) Make the findings for approval, including California Environmental Quality Act (CEQA) findings, of the proposed Ordinance (Attachment 1);
- b) Determine that the adoption of this Ordinance is categorically exempt from the CEQA pursuant to Section 15061(b)(3) of the Guidelines for Implementation of State CEQA (Attachment 2); and
- c) Adopt an Ordinance (Case No. 17ORD-00000-00007) amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment 3).

## **Summary:**

On July 11, 2017, the Board of Supervisors (Board) directed County staff to prepare amendments to Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code that would:

- Establish a process to determine legal, nonconforming status of existing medical cannabis cultivators; and
- Provide for the termination of such legal, nonconforming status so that existing medical cannabis cultivators must either obtain County permits or cease operations.

On September 13, 2017, the Planning and Development Department presented Case No. 17ORD-00000-00007, an Ordinance that would amend Article X in a manner that implements the Board's direction, to the County Planning Commission for their review and consideration. By a vote of four to one (Commissioner Brown voting no), the County Planning Commission adopted a resolution recommending that your Board adopt the Ordinance (Attachment 3) with the following revisions:

- Include language that would allow the operator of a nonconforming cultivation location to make minor modifications to an existing medical cannabis cultivation site that are required to comply with State regulations, without jeopardizing the location's nonconforming status, and provided the modification would not result in an expansion of the operation.
- Change the noticing requirement to provide that mailed notice be provided to all properties within 1,000 feet of the project site instead of the standard 300 feet.

## **Background:**

The Medical Marijuana Regulation and Safety Act (MMRSA) became effective on January 1, 2016, and established a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical marijuana. In response to the MMRSA, the Board, by the adoption of Ordinance No. 4954 on January 19, 2016, added Article X, Medical Marijuana Regulations, to Chapter 35, Zoning, of the Santa Barbara County Code. As adopted, Article X prohibits the cultivation and delivery of marijuana except for two very limited exemptions in order to protect the public health, safety, and welfare. One exemption is for small, personal medicinal cultivation sites as allowed by State law. The other exemption applies to medical marijuana cultivation locations that were operating in compliance with State and local laws as of January 19, 2016. Article X provides that such operations are considered to be legal, nonconforming uses that can continue to cultivate marijuana. As originally adopted, Article X did not include a procedure to determine whether a medical marijuana cultivation location qualified as a legal, nonconforming operation, and it did not contain any timing regarding when the exemption might expire.

In November 2016, the voters passed Proposition 64 - Adult Use of Marijuana Act (AUMA), which legalized non-medical adult use of cannabis. In response, the State began developing licensing requirements and other regulations regarding both medical and non-medical cannabis activities. These efforts culminated in the "Cannabis Trailer Bill" (SB 94), which Governor Brown signed into law on June 27, 2017. The bill consolidated state statutes that had been enacted through the MCRSA and AUMA, under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA established methods for collecting taxes and reconciling the two laws, restructured the

Bureau of Medical Cannabis Control as the Bureau of Cannabis Control, and consolidated authority that was previously intended to be dispersed among several state agencies.

State agencies continue to develop regulations and anticipate accepting applications to issue state licenses starting in January 2018. Failure to comply with the regulations will prevent initial licensure and, once a licensee obtains a license for a cannabis operation, failure to continue to comply with the State regulations could lead to revocation of the license and/or civil and criminal penalties. Additionally, local government retains the ability to regulate or prohibit medical marijuana activities separately or completely.

In response to the AUMA, the Board of Supervisors adopted an interim (urgency) ordinance on April 4, 2017, to temporarily prohibit any activities associated with the AUMA, including the cultivation, distribution, transportation, storage, manufacturing, processing, and selling of nonmedical marijuana, nonmedical marijuana products, and industrial hemp, and outdoor cultivation for personal use. The purpose of this interim ordinance is to protect public health, safety, and welfare while the County develops comprehensive regulations for marijuana activities that would apply in the unincorporated area of Santa Barbara County. Since the State currently intends to start issuing licenses for cannabis activities on January 1, 2018, this ordinance allows the County to retain local control while it develops local regulations that will protect the public health, safety, and welfare of residents of the County. On May 2, 2017, the Board extended this interim ordinance by 22 months and 15 days, thereby extending the temporary moratorium until March 17, 2019.

On February 14, 2017, the Board of Supervisors established an Ad-hoc Advisory Subcommittee to assist staff with the development of amendments to the County's zoning ordinances and other cannabis-related ordinances set forth in the County Code to be consistent with the regulation of medicinal and non-medicinal cannabis as promulgated by the State, and provide local permit requirements and development standards for the different cannabis license types that are allowed under the State statutes. This project, also known as the Cannabis Land Use Ordinance Amendments and Licensing Program, includes the preparation of:

- Amendments to the County Land Use and Development Code, the Montecito Land Use and Development Code, and the Article II Coastal Zoning Ordinance, as well as other cannabis-related ordinances set forth in the County Code, and
- Preparation of an environmental impact report to inform decision-makers about the potential environmental impacts that may result from the permitting and licensing regulatory options.

Staff is estimating that - if the Board approves the ordinance amendments - the ordinance amendments would become effective in March 2018 for the inland portion, and June 2019 for the coastal portion of Santa Barbara County. This latter date is estimated based on the typical length of time required for the Coastal Commission to certify an amendment to the Article II Coastal Zoning Ordinance.

## **Analysis:**

### **1.0 Purpose.**

**1.1 Nonconforming status determination.** There are existing cultivators of medical cannabis who assert that they are operating in compliance with the standards of Article X and would like to continue as legal, nonconforming operations. However, Article X presently does not include a procedure whereby an existing cultivator may apply for and receive a County determination

regarding whether they are operating in compliance with Article X, and are thus considered legal, nonconforming. Therefore, one purpose of the proposed Article X ordinance amendment is to establish a procedure to determine the nonconforming status of medical marijuana cultivation locations existing as of January 19, 2016. Cultivators could use this procedure to apply for a State license prior to the effective date of the ordinance amendments that result from the Cannabis Land Use Ordinance Amendments and Licensing Program.

**1.2 Termination of nonconforming status.** The recent changes in State law resulting from SB 94 will enable local jurisdictions to more effectively control and regulate existing medicinal cannabis activities as compared to the laws in effect as of January 19, 2016. These recent changes included a number of requirements that pertain to the regulation of medical cannabis activities, as well as newly permissible non-medical cannabis activities, which previously either did not exist or were not enforced by the State. Thus, the Ad-hoc Advisory Subcommittee advised the Board to adopt regulations to require that by a specific date, existing legal nonconforming cultivators of medical cannabis must either cease their cultivation activities or operate their cultivation activities in compliance with current State requirements and local ordinances that will result from the Cannabis Land Use Ordinance Amendments and Licensing Program. Currently, Article X does not require that existing legal, nonconforming cultivators of medical cannabis must either cease their operations or comply with any new regulations by a certain date. Therefore, a second purpose of the Article X ordinance amendment is to terminate the legal nonconforming status of medical cannabis cultivation locations that were operating in compliance with State and local laws as of January 19, 2016. This would require the operator of the nonconforming location to either (1) cease operations by the termination date, or (2) apply for and obtain both State and local licenses and permit(s) in compliance with the County zoning ordinances in order to keep operating past the termination date.

Attachment 6 provides a flow chart of the draft procedure for determinations regarding the nonconforming status of existing medical cannabis cultivation locations, and the possible outcomes depending on whether the location is determined to be legal or illegal.

## **2.0 Proposed amendments.**

The following provides a summary of the draft ordinance amendment (Attachment 3). In the draft ordinance amendment, text that is proposed to be deleted is shown by striking through the text, and text that is proposed to be added is underlined.

**2.1 SECTION 1.** The existing list of section headings in Article X would be modified to include a new Section 35-1005 titled “Nonconforming Status Determinations” and to renumber existing Section 35-1005, Existing County Code Not Affected, as Section 35-1006.

See page 1 of Attachment 3.

**2.2 SECTION 2.** Section 35-1002, Definitions, would be amended to add the following definitions since these terms are used in the language that is proposed to be added to Article X:

<i>Applicant</i>	<i>Board of Supervisors</i>	<i>Coastal Zone</i>	<i>Department</i>
<i>Director</i>	<i>Owner</i>	<i>Planning Commission</i>	<i>Review Authority</i>

See pages 1 and 2 of Attachment 3.

**2.3 SECTION 3.** Section 35-1003, Prohibited Acts and Exemptions, would be amended to add language to provide that the current exemption, from the prohibition on medical cannabis cultivation, for locations that existed as of January 19, 2016, if they were legal under State and law as of that date, shall terminate:

- Six months after the operative date of the County ordinances that result from the Cannabis Land Use Ordinances and Licensing Program, or at a minimum of one year from the effective date of this amendment to Article X; or
- At a later date, provided the nonconforming operation can be permitted under the ordinance amendments that result from the Cannabis Land Use Ordinance Amendments and Licensing Program and the operator (1) has filed a complete application with the County to obtain the necessary permit(s) local licenses, and (2) continues to comply with the restrictions on nonconforming uses.

Including this six month or longer period following the operative date of the new ordinances, or a minimum one year from the effective date of this amendment to Article X, would give an operator of an existing, nonconforming cultivation location adequate time to either obtain the necessary State and local licenses, or, if licenses cannot be issued, sufficient time to recoup their economic investment in the operation.

The Planning Commission was concerned, given the restrictions on improvements that may be made to a legal, nonconforming use, that a nonconforming medical marijuana cultivation location would not be able to make any changes to the operation that may be required in order to comply with State regulations that will apply to State licenses for the cultivation of medical cannabis without jeopardizing the location's nonconforming status. Therefore, the Planning Commission recommendation includes adding language to the draft ordinance amendment that would allow the operator of a nonconforming cultivation location to make minor modifications to an existing medical cannabis cultivation site, provided the modification is required to comply with State regulations, and that the modification would not result in an expansion of the operation. This language is shown below as Subsection (1), Minor modifications allowed, which would be added to Subsection a., Exemption.

***a.** Exemption. Medical marijuana cultivation locations which (1) are not subject to the exemption for personal use set forth in Subsection A.1 (Medical marijuana cultivation for personal medical use exemption), (2) were already existing on January 19, 2016, if they and (3) are legal under California state and local law; ~~these would become~~ are legal nonconforming uses.*

***(1) Minor modifications allowed. Notwithstanding the restrictions on nonconforming uses pursuant to the County Land Use and Development Code Section 35.101.020 (Nonconforming Uses of Land and Structures), the Montecito Land Use and Development Code Section 35.491.020 (Nonconforming Uses of Land and Structures), and Article II, the Coastal Zoning Ordinance Section 35-161 (Nonconforming Uses of Land, Buildings, and Structures), minor modifications to a nonconforming cultivation location may be allowed provided:***

***(a) The modification is required in order to comply with State regulations, and***

***(b) The modification does not result in an expansion or extension of the area of the medical marijuana cultivation location beyond the area that existed on January 19, 2016.***

See pages 2 and 3 of Attachment 3.

**2.4 SECTION 4.** A new Section 35-1005 titled “Nonconforming Status Determinations” would be added to Article X that provides the application and approval process for a nonconforming status determination. This section includes:

a. Application preparation and filing requirements that include the requirement to submit materials to support a finding that the operation can be determined to be nonconforming based on the following criteria:

- (1) The medical cannabis cultivation location existed on January 19, 2016 (Santa Barbara County Code, Chapter 35, Article X, Section 35-1003.A.2).
- (2) The medical cannabis cultivation location is not located within a 600-foot radius of a school [Health and Safety Code Section 11362.768(b)].
  - (a) The distance shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures [Health and Safety Code Section 11362.768(c)].
  - (b) For the purposes of this requirement, “school” means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes [Health and Safety Code Section 11362.768(h)].
- (3) The medical cannabis cultivation location complies with local laws, including for example, zoning, building, grading, and water requirements, codes, and ordinances [California Health and Safety Code Section 11362.769 and 11362.777(b)(3); Business and Professions Code Section 19322(a)(2)].
- (4) The medical cannabis cultivation is not a for profit business/organization [Health and Safety Code Section 11362.765(a)].
- (5) The owner/operator of the medical cannabis cultivation location has a caregiver relationship with qualified patients and/or their primary caregivers [Health and Safety Code Section 11362.5(d)].
- (6) The quantity of medical cannabis cultivated complies with the amounts specified in Health and Safety Code Section 11362.77(a) and (b).
- (7) A copy of a valid Seller’s Permit from the State Board of Equalization

See pages 3, 4 and 5 of Attachment 3.

b. Processing requirements including that:

- (1) The Planning Commission is the review authority for applications for nonconforming status determinations,
- (2) The Planning Commission must conduct a public hearing on the application, and

(3) The action of the Planning Commission may be appealed to the Board of Supervisors.

See page 5 of Attachment 3.

- c. A requirement that in order to approve an application for a nonconforming status determination, the Planning Commission must first find that there is substantial evidence to support any claims that the operation of the medical marijuana cultivation location existing as of January 19, 2016, was in compliance with all applicable State laws and County regulations and therefore qualifies as a legal, non-conforming use.

See page 6 of Attachment 3.

- d. Noticing requirements that apply both to the submittal of an application for a nonconforming status determination and the actual hearing on the application. The proposed noticing requirements are the same as those found in the County's zoning ordinances that apply to applications for discretionary permits. This includes the requirement that mailed notice of both the filing of an application for a nonconforming status determination, and the notice of the hearing date of the public hearing, shall be mailed to owners of property located within a 300-foot radius of the exterior boundaries of the subject lot. The County Planning Commission recommendation includes increasing the distance from 300 feet to 1,000 feet. This revision is included in the draft ordinance (Attachment 3).

See pages 6, 7 and 8 of Attachment 3.

- e. Requirements that apply to appeals of decisions of the Planning Commission including who may appeal, required materials to be submitted with the appeal, and the timing of the appeal. The decision of the Planning Commission would be appealable to the Board.

See pages 8 and 9 of Attachment 3.

### **3.0 Environmental Review.**

The proposed ordinance amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code is exempt from environmental review pursuant to Section 15061(b)(3) of the State CEQA Guidelines. Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. As explained further in Attachment 2 (Notice of Exemption), no significant environmental impacts would occur as a result of this ordinance amendment.

#### **Fiscal Analysis:**

Staffing and budget allocations for work on the amendment to Article X is included in the proposed Long Range Planning Division work program for FY 2017-2018.

The proposed ordinance would provide existing cultivators of medical cannabis a process by which the County would determine whether they qualify as legal, nonconforming operations, and a point in time when the exemption from the prohibition of the cultivation of medical cannabis for legal, nonconforming operations would expire. There is no reliable method to estimate the number of

cultivators who would seek a nonconforming status determination. However, the Department anticipates that it will take approximately 40 to 50 staff hours to bring each application to the Planning Commission for a determination. Therefore, if 15 applications for nonconforming determinations are received within a year, the Department would need to add, or shift from other programs, 0.5 Full-Time Equivalent (FTE) staff planner position. Costs of processing such applications would be fully offset by the payment of application review fees.

Additionally, locations that are determined to be illegal operations (i.e., do not qualify as legal, nonconforming operations, or continue to cultivate cannabis without the requisite permit(s) and/or local license(s) after the expiration of the exemption), would be subject to code enforcement. There is also no reliable method to estimate the level of code enforcement activity that may result from the adoption of this ordinance. Planning and Development Department enforcement staff time devoted to cannabis cultivation has been approximately 1.0 FTE since the adoption of Article X. This does not include staff resources from other County departments. Given the broad interest in cultivation, it is expected that a high level of code enforcement activity will continue. Staff cannot predict how many violations may occur as a result of the proposed ordinance. Therefore, staff cannot quantify the fiscal, staffing, and facilities impacts of enforcing the proposed ordinance.

**Special Instructions:**

- A. The Planning and Development Department will satisfy all noticing requirements.
- B. The Clerk of the Board shall provide copies of the Minute Order and signed Ordinance to the Planning and Development Department, attention Noel Langle, Senior Planner.

**Attachments:**

- 1. Article X Findings
- 2. Article X Notice of Exemption
- 3. Article X Ordinance Amendment
- 4. County Planning Commission Resolution
- 5. County Planning Commission Staff Report (w/o attachments)
- 6. Nonconforming Status Determination Procedure Flowchart

**Authored by:**

Noel Langle, Senior Planner (805-568-2067)