

SANTA BARBARA COUNTY PLANNING COMMISSION
Medical Marijuana Nonconforming Status Determination
and Termination of Exemption Ordinance Amendment

Hearing Date: September 13, 2017
Staff Report Date: September 6, 2017
Case No.: 17ORD-00000-00007
Environmental Document: CEQA Exempt [CEQA Guidelines Section 15061(b)(3)]

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1.0 REQUEST

Hearing on the request of the Planning and Development Department that the County Planning Commission recommend to the Board of Supervisors that the Board of Supervisors adopt an ordinance (Case No. 17ORD-00000-00007) amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment C.

The proposed ordinance will amend Article X to:

1. Provide that the current exemption from the prohibition of medical marijuana cultivation for medical marijuana cultivation locations that existed as of January 19, 2016, if they were legal under California state law as of that date, shall terminate six months after the operative date of the County ordinance regarding medical marijuana cultivation which is being studied by the Cannabis Land Use Ordinances and Licensing Program EIR (Project Case Nos.: 17ORD-00000-00009, -00010, and -00013).
2. Include a process by which the operator of a medical marijuana cultivation location that existed as of January 19, 2016, may seek a determination from the County that the medical marijuana cultivation location is considered legal, nonconforming.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 17ORD-00000-00007 as shown in Exhibit 1 of Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);
2. Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and
3. Adopt a Resolution recommending that the Board of Supervisors approve Case No. 17ORD-00000-00007, an ordinance amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

Please refer the matter to staff if your Commission takes other than the recommended action for the development of appropriate materials.

3.0 JURISDICTION

The County Planning Commission is considering this project based on Section 2-25.2 of Chapter 2 of the Santa Barbara County Code that authorizes the County Planning Commission to make recommendations to the Board of Supervisors on planning and zoning applications, proposals, and matters.

4.0 BACKGROUND AND ISSUE SUMMARY

4.1 Background.

On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA). This proposition amended the California State Health and Safety Code to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician.” The CUA also provided that patients and primary caregivers would not be subject to criminal prosecution or sanction.

Senate Bill 420, the Medical Marijuana Program Act (MMPA), which became effective on January 1, 2004, sought to clarify the scope of the CUA and facilitate the prompt identification of qualified patients and their primary caregivers. Pursuant to the MMPA and more recent court decisions, a qualified patient or primary caregiver may possess an amount that is reasonably related to meet current medical needs.

On January 1, 2016, Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, which together constitute the Medical Marijuana Regulation and Safety Act (MMRSA), became effective and set forth a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical cannabis. In response to this legislation, the County Board of Supervisors, on January 19, 2016, adopted Ordinance No. 4954 which added Article X, Medical Marijuana Regulations, to Chapter 35, Zoning, of the of the Santa Barbara County Code. The effect of Article X was to prohibit the cultivation and delivery of marijuana except for two very limited exceptions in order to protect the public health, safety, and welfare. One exemption was for small, personal cultivation sites as allowed by State law. The other exemption applies to medical marijuana cultivation locations that were operating in compliance with California State and local laws as of January 19, 2016. Article X provides that such operations are legal nonconforming uses, and can continue to cultivate marijuana.

On November 8, 2016, the voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (also known as the Adult Use of Marijuana Act or AUMA). The AUMA established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the growing and retail sale of marijuana. It also included provisions for the cultivation of industrial hemp. The AUMA required a state license to engage in commercial nonmedical marijuana activity and required the state to start issuing licenses on January 1, 2018. Nonmedical marijuana operators would have had to conform to all regulations enacted by the State of California and the issuance of these licenses would have required the local jurisdiction’s approval if the jurisdiction adopted regulations in accordance with the AUMA. The AUMA did not limit the authority of a local governing body to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana operations, and local jurisdictions could have regulated or banned all outdoor cultivation and imposed reasonable regulations on personal cultivation.

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.

Senate Bill No. 94 (SB 94), the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which was signed into law on June 27, 2017, amended the State of California Business and Professions Code, the Fish and Game Code, the Food and Agricultural Code, the Health and Safety Code, Revenue and Taxation Code, and the Vehicle Code, to address the cultivation, manufacture, sale, transport, and use of both medicinal and non-medicinal cannabis. More specifically, SB 94 requires applicants to obtain a (1) State license (available as of January 1, 2018) and (2) local license, permit, and/or other authorization if required by the local jurisdiction. However, instead of requiring an applicant for a State license to provide proof of a local license, permit, and/or other authorization, the new law requires the State to request information from the local jurisdiction regarding the proposed marijuana activity's compliance with local regulations. When notified of a pending State application, the local jurisdiction has three options:

1. Inform the State that the applicant is in compliance with local laws, which would allow the State application to proceed;
2. Inform the State that the applicant is not in compliance with local laws, which would stop the State application process and the State application would be denied; or
3. Not respond to the State within 60 days. Under this scenario, the State presumes that the application is in compliance with local laws. However, the County can file information with the State afterwards that would challenge this presumption and could result in potential suspension or revocation of the State license.

On February 14, 2017, the Board of Supervisors established an ad-hoc advisory committee to assist the Planning and Development Department in the development of ordinance amendments to the County Land Use and Development Code, the Montecito Land Use and Development Code, and the Article II Coastal Zoning Ordinance (collectively, "the County zoning ordinances") that will be consistent with the regulation of medicinal and non-medicinal marijuana 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. Staff is estimating that following review and adoption by the Board of Supervisors these ordinance amendments would become effective in March 2018 for the inland portion, and May 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 the amendment to Article II.

4.2 Issue Summary.

There are existing cultivators of medicinal marijuana 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 does not set forth a procedure by which the existing cultivators of medicinal marijuana may apply for and receive a County determination regarding whether they are operating in compliance with Article X. Therefore, one purpose of the proposed amendments to Article X is to establish a process by which the County may determine the nonconforming status of medical marijuana cultivation locations existing as of January 19, 2016, if an existing cultivator including applicants for State licenses, requests such a determination before the time at which the Board of Supervisors adopts ordinances amending the County zoning ordinances.

Furthermore, the recent changes in State law resulting from SB 94 likely will enable State and local jurisdictions to more effectively control and regulate existing medicinal marijuana activities, as compared to State law in effect as of January 19, 2016. The recent changes in State law included a number of requirements for the regulation of medicinal marijuana activities (as well as newly permissible non-medicinal marijuana activities), which previously did not exist or the State did not enforce. Thus, the ad-hoc advisory committee advised the Board of Supervisors to adopt regulations to require existing cultivators of medicinal marijuana to either cease their cultivation activities or operate their cultivation activities in compliance with current State and local law, by a specified date. Currently, Article X does not provide any such requirement. Therefore, a second purpose of the amendments to Article X is to terminate the legal nonconforming status of medical marijuana 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 medical marijuana cultivation 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 as amended by the Board in order to keep operating past the termination date.

The language of the proposed amendment to Article X attached to this staff report recommends that the nonconforming status of medical marijuana cultivation locations that existed as of January 19, 2016 shall terminate six months after the operative date of the applicable County ordinance regarding marijuana cultivation which is being studied by the Cannabis Land Use Ordinances and Licensing Program EIR (Project Case Nos.: 17ORD-00000-00009, -00010, and -00013). The amendment also proposes to revise Article X to provide that if the County medical marijuana ordinance referenced above allows for cultivation of medical marijuana but requires a zoning permit, legal, nonconforming uses that have submitted a complete application to the Santa Barbara County Planning and Development Department to permit their legal, nonconforming cultivation site by the termination date listed above may continue to operate their same existing legal, nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the cultivation location continues to comply with the requirements of Article X as revised, State law and the applicable provision of either 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), or Article II, the Coastal Zoning Ordinance Section 35-161 (Nonconforming Uses of Land, Buildings, and Structures). However, if the permit application is denied, then the applicant shall cease all marijuana cultivation operations until a permit is obtained.

Your Commission may wish to consider other options regarding the termination of legal, nonconforming status; such options could include:

- Having one specific date (*i.e.*, January 1, 2020) that would apply Countywide, or

- One specific date that would apply to the inland area (*i.e.*, January 1, 2019) and specific date that would apply to the Coastal Zone (*i.e.*, January 1, 2020), or
- Options with different lengths of time than those specified above.

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

5.0 PROJECT DESCRIPTION AND ANALYSIS

The following provides a summary of the draft ordinance amendment that is attached as Exhibit 1 of Attachment C. In Exhibit 1, text that is proposed to be deleted is shown by striking through the text, and text that is proposed to be added is underlined.

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 35-1006.

See page 1 of Exhibit 1 of Attachment C.

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 Exhibit 1 of Attachment C.

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 of medical marijuana 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 ordinance regarding medical marijuana cultivation which is being studied by the Cannabis Land Use Ordinances and Licensing Program EIR (Project Case Nos.: 17ORD-00000-00009, -00010, and -00013).

This would give an operator of an existing, nonconforming 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.

See pages 2 and 3 of Exhibit 1 of Attachment C.

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 marijuana cultivation location was existing on January 19, 2016 (Santa Barbara County Code, Chapter 35, Article X, Section 35-1003.A.2).
- (2) The medical marijuana 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 marijuana 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 marijuana 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 marijuana cultivation is not a for profit business/organization [Health and Safety Code Section 11362.765(a)].
- (5) The owner/operator of the medical marijuana 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 marijuana 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 Exhibit 1 of Attachment C.

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 Exhibit 1 of Attachment C.

c. The requirement that in order to approve an application for a nonconforming status determination that 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 California State laws and County regulations and therefore qualifies as a legal non-conforming use.

See pages 5 and 6 of Exhibit 1 of Attachment C.

- d. Noticing requirements that both apply to the submittal of an application for a nonconforming status determination and the actual hearing on the application. These noticing requirements are the same as those found in the County's zoning ordinances that apply to applications for discretionary permits.

See pages 6, 7 and 8 of Exhibit 1 of Attachment C.

- e. Requirements that apply to appeals of decisions of the Planning Commission including who may appeal and required materials to be submitted with the appeal.

See pages 8 and 9 of Exhibit 1 of Attachment C.

6.0 ENVIRONMENTAL REVIEW

The proposed ordinance amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the of the Santa Barbara County Code is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA). 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 B (Notice of Exemption), no significant environmental impacts would occur as a result of this ordinance amendment.

7.0 POLICY CONSISTENCY

The proposed ordinance does not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including the Coastal Land Use Plan. The proposed ordinance would not allow any new development as it only provides (1) a process to determine whether existing development can be considered to be legal but nonconforming and (2) a date by which all existing cultivators of medicinal cannabis must cease operations or comply with new State and local laws. The adoption of the proposed ordinance would not result in any inconsistencies with the adopted policies and development standards.

8.0 ORDINANCE COMPLIANCE

The proposed amendments are consistent with the remaining portions of Article X that would not be revised by these amendments. Article X, as amended, would be consistent with the remainder of the existing County Code.

9.0 PROCEDURES

The County Planning Commission may recommend approval, approval with revisions, or denial of the

proposed ordinance to the Board of Supervisors.

10.0 APPEALS PROCEDURE

The Board of Supervisors, as the local legislative body for the County of Santa Barbara, is the decision-making authority that must take final action on the proposed ordinance amendments. Therefore an appeal of the action of the County Planning Commission is not required.

11.0 ATTACHMENTS

- A. 17ORD-00000-00007 Article X Findings
- B. 17ORD-00000-00007 Article X CEQA Notice of Exemption
- C. 17ORD-00000-00007 Article X Resolution and Proposed Ordinance
- D. Nonconforming Status Procedure Flowchart