

CITY of CARPINTERIA, CALIFORNIA



February 23, 2018

Santa Barbara County Board of Supervisors
Attention: Clerk of the Board
105 East Anapamu Street
Santa Barbara, CA 93101-2058
Via email to: sbcob@co.santa-barbara.ca.us and cannabisinfo@countyofsb.org

Re: February 27, 2018 Meeting – Public Comment on Item 1
Request for Cap on Commercial Cannabis Activity in Coastal Zone

Dear Chair Williams and Members of the Board:

The City of Carpinteria (“City”) submits this letter to reiterate its request for a cap on the amount of commercial cannabis activity permitted within the Coastal Zone under the Cannabis Land Use Ordinance and Licensing Program (“Cannabis Regulations”). In a comment letter submitted for the Board’s February 6th hearing at which it adopted the Cannabis Regulations, the City proposed that the County amend the regulations to require that no more than 146 acres of cannabis canopy be permitted in the Carpinteria Agricultural Overlay District. Despite no public opposition being expressed at the hearing, the Board declined to adopt the City’s proposal. The only justification given was that the proposed cap would run afoul of a uniformity requirement. Yet no information was provided at the hearing as to the legal or policy basis for the uniformity requirement.

Although the City is not aware of any legal barrier to adopting a zone- or overlay-specific cap, in an effort to satisfy the County’s uniformity concern, the City now modifies its proposal to request that no more than 281.5 acres of commercial cannabis activity be permitted within the Coastal Zone.¹ Specifically, the City requests that Section 35-144U.D.1 of the County’s Coastal Zoning Ordinance (“CZO”) be amended by adding a new subsection n. to read as follows:

¹ The proposed 281.5 acre cap is based on an assumption that existing cultivation patterns will continue. It is derived by multiplying the portion of existing cultivators located in the Coastal Zone by the 1,126 acres of total cannabis canopy countywide projected in the EIR for the Cannabis Regulations. (EIR, p. 2-22). The EIR does not specifically identify the portion of existing cultivators in the Coastal Zone. However, the number of cultivators can be conservatively estimated by calculating the total percentage of existing cultivators in communities that contain land eligible for cannabis cultivation under the Cannabis Regulations and located entirely or partially within the Coastal Zone, per data provided in the EIR. (See EIR, p. 2-23). This includes 20% in Carpinteria, 1% in Toro Canyon, 0% in Isla Vista, 1% in Eastern Goleta Valley, 0% in Guadalupe/Casmalia, 1% in Montecito/Summerland, and 2% in Gaviota, for a total of 25%. Twenty-five percent of 1,126 total projected acres of cannabis canopy equals 281.5 projected acres in the Coastal Zone.

n. No more than a total of 281.5 acres of commercial cannabis activity shall be permitted on AG-I and AG-II zoned land subject to this Article. Commercial cannabis activity may be noncontiguous but each unique area included in the total calculation shall be separated by an identifiable boundary including, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots. If plants are being cultivated using a shelving system, the surface area of each level shall be included in the total acreage calculation. For the purpose of calculating this development cap, all cannabis related development (including associated paved parking and driveways, and associated accessory structures [e.g. boiler rooms, storage sheds, etc.]) shall be included.

The City believes that this proposed cap would meet any uniformity requirements as it would be applied uniformly to all properties zoned AG under the CZO. The Planning and Zoning Law provides that regulation in one type of zone may differ from those in other types of zones. (Gov't. Code § 65852.) Courts have even upheld regulations that impose different standards within the same zone when the regulations are based on a uniform standard. (See, e.g., *Desert Outdoor Advertising v. San Bernardino County* (1967) 255 Cal.App.2d 765 [finding that ordinance banning advertising structures within 500 feet of the freeway did not violate uniformity requirement in planning and zoning law because it applied to all properties meeting the conditions]; *Brougher v. Board of Public Works of City and County of San Francisco* (1930) 107 Cal.App. 15 [upholding ordinance that imposed different building height restrictions on properties within the same zone district].) The City's proposed cap would meet uniformity requirements because it applies to all properties with an AG zoning designation under the CZO.

There are many instances where the County has recognized the need to regulate land uses in the Coastal Zone differently from the inland areas of the County. For example, in the Coastal Zone, wineries are prohibited in the AG-I zone and require a Major CUP in the AG-II zone. (CZO §§ 35-68 and 35-69.4.) While in the inland areas of the County, an entirely different tiered set of permit requirements and development standards apply. (Land Use and Development Code ("LUDC") § 35.42.280.) In the Coastal Zone, processing of agricultural products grown off the premise is allowed with a Major CUP in the AG-I zone. (CZO § 35-68.4.3.) In the inland area, off-premise processing of agricultural products is prohibited in the AG-I zone. (LUDC, Table 2-1.) Maximum building height standards also differ between the coastal and inland areas in the same zone districts. For example, the maximum building height in most areas of the coastal R-1/E-1 and R-2 zones is 25 feet. (CZO § 35-71.10 and 35-72.10.) In the same zones in most of the inland area it is 35 feet. (LUDC, Table 2-11.)

Imposing different standards in the Coastal Zone furthers the goals and objectives of the Coastal Act, which is premised on the concept that the Coastal Zone should be treated differently because it "is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem." (Pub.

Res. Code § 30001)(a.) The legislative scheme established by the Coastal Act, which involves the adoption of a Local Coastal Program to specially regulate land use within the Coastal Zone, recognizes that the Coastal Zone should be treated differently. The CZO recognizes that unique considerations in the Coastal Zone demand special regulations to protect resources and balance land uses. The purposes of the CZO include assuring orderly, balanced utilization and conservation of Coastal Zone resources taking into account social and economic needs of the people of the County and protecting the character and stability (social and economic) of agricultural, residential, commercial, and industrial areas. (CZO § 35-50.)

The City believes that its proposed cap on commercial cannabis activity supports the purposes of the Coastal Act and CZO by ensuring that the cannabis industry does not overrun other valuable activities in the Coastal Zone. Information included in the EIR for the Cannabis Regulations and City comment letters on the EIR, demonstrates that agricultural properties within the Coastal Zone are particularly attractive to the cannabis industry. As an incipient industry, the full range of potential impacts of cannabis cultivation and ancillary operations are unknown. Therefore, it is incumbent upon the County to adopt a cap to protect the unique valuable resources of the Coastal Zone by ensuring balanced use of Coastal Zone lands.

Finally, the City's proposal for a cap was raised as a potential mitigation measure in a comment on the Final EIR. The County never explained why the proposed cap would violate a uniformity requirement or the legal basis for the uniformity requirement. If the Board declines to adopt a cap based on a uniformity requirement, the City requests that, in the interests of transparency under California Environmental Quality Act and general law, the County publicly provide the legal or policy basis for this decision.

Thank you for considering these comments.

Sincerely,



Dave Durflinger
City Manager, City of Carpinteria

CC: Jessica Metzger, Santa Barbara County Planning & Development
City Council Members