

CITY of CARPINTERIA, CALIFORNIA



March 3, 2020

Honorable Laura Bridley, Chair
Santa Barbara County Planning Commission
c/o Planning and Development, Hearing Support
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: March 4, 2020 Planning Commission Agenda
Standard Agenda Item No. 2, Cannabis Zoning Ordinance Amendments

Honorable Chair Bridley:

The City of Carpinteria (“City”) wishes to go on record as being in support of the Santa Barbara County Planning Commission’s ongoing efforts related to possible amendments to the County’s Cannabis Zoning Ordinance regulations. We are encouraged to see that many of the recommendations from the City’s previous January 21, 2020 letter to your Commission (attached hereto as Attachment A) continue to be reflected in the table of recommended options included in the staff memorandum for further consideration.

In particular, we want to share our support for efforts that would require odor control for existing “legal nonconforming” operations, and amendments that would strengthen the efficacy and enforceability of odor control requirements for all operations. We also support recommendations that strengthen permit requirements for all cannabis projects.

To aid in the Commission’s ongoing deliberations, we would like to share some additional insights and suggestions related to the Commission’s list of recommendations based on our experiences in the Carpinteria Valley. Many of these bulleted items are further supported by the comments in our January 21st letter:

- **Odor Control.** Nuisance and possible public health impacts related to cannabis odors and odor control techniques remain the top priority issue for the City of Carpinteria. Meaningful progress on improving the odor issues in Carpinteria is imminently critical; maintaining the status quo is unacceptable.
 - Objective verification of compliance with odor control requirements, measured at the property line of the parcel upon which cannabis cultivation is occurring, provides the clearest, most enforceable means of ensuring nuisance odors do not escape cannabis operations. Ongoing compliance monitoring is absolutely critical to the efficacy of any odor control requirements.
 - City of Carpinteria staff met with Assistant County CEO Melekian and Air Pollution Control District (“APCD”) staff to discuss opportunities for APCD staff to play a more active role in permit review and nuisance odor control in the County in a manner that could leverage APCD’s resources and knowledge toward addressing ongoing

nuisance odor impacts. Among other things, we understand APCD staff has been looking into possible technologies that could aid in objectively measuring and quantifying odor control compliance of individual operations. We understand that discussions between County and APCD staff remain ongoing but wish to reiterate our support for this type of inter-agency coordination.

- Sealed greenhouses and carbon filtration appear to remain the “gold standard” for effective odor control. It is our understanding that at least one provisionally licensed cannabis cultivation operation in the Carpinteria Valley is using this method on a retrofitted greenhouse, thus demonstrating that it is indeed feasible to do so for others. We believe requiring sealed greenhouses and carbon filtration should be strongly considered for cultivation facilities located near urbanized land uses. Short of that, we support the Commission’s consideration of ordinance amendments that would incentivize such upgrades to odor control systems. Open sided, and extensively vented greenhouses, such as the examples included in our previous January 21st letter are entirely inadequate for commercial cannabis cultivation activity in close proximity to urban land uses.
 - The table in Attachment 1 to the Staff memorandum for this item suggests in several instances that “all growers in Carpinteria Valley purportedly have odor control.” If this in fact is true, a visit to the Carpinteria Valley on any given morning or evening will demonstrate that the odor control techniques being allegedly employed remain largely inadequate. Strong cannabis odors persist in multiple areas throughout the Valley. This reinforces the fact that simply requiring odor control of existing “legal nonconforming” uses is not enough; compliance monitoring and enforcement for “legal nonconforming” operations is needed.
 - At the last Commission meeting discussion on this item, County planning staff suggested that existing “legal nonconforming” growers could not install or be required to install odor control without possibly jeopardizing their “legal nonconforming” status since installation of such systems would likely require issuance of a Coastal Development Permit (CDP). Considering the same staff is now claiming that all growers in the Carpinteria Valley purportedly have odor control, despite the County having only issued CDPs to a small fraction of the operations, it would appear that either: a.) a CDP is not in fact required and therefore an operation’s “legal nonconforming” status would not be jeopardized by being required to install and maintain odor control; or b.) a CDP is required and yet all or most of the cultivators in the Valley somehow still managed to install odor control systems without running afoul of the limitations of their “legal nonconforming” status. In either case, something appears to be amiss with the information provided by staff and seems to unnecessarily discourage further consideration of such requirements. Addressing odor issues with existing “legal nonconforming” operations is arguably the most critical action the County could take to remedying cannabis-related complaints in the Carpinteria Valley.
- **Permit Requirements.** More stringent permit requirements serve to ensure that the potential impacts of commercial cannabis operations are properly identified and addressed in an open forum where those impacted by such uses have an opportunity to have their

voices heard. Requiring a Conditional Use Permit (CUP) for all cannabis operations affords the Commission greater discretion over the permitting and conditioning of such uses to effectively address potential impacts, allows for greater public participation, and may, inadvertently, streamline the permitting processes for applicants by reducing the number of steps in the permitting process and limiting opportunities for multiple sequential appeals.

We continue to believe that consideration should also be given to efforts to limit or discourage the over-concentration of cannabis operations in confined geographic areas like the Carpinteria Valley, and especially in close proximity to urbanized land uses. We recognize the intent of exploring possible overlay districts for cannabis activities is to identify areas where cannabis operations could locate with less potential for land use conflicts in exchange for a simpler permitting process. However, given the infrastructure already in place in Carpinteria, it seems unlikely that such overlay districts would do anything to diffuse the over-concentration already occurring here and likely to intensify should all pending permit applications eventually be granted. Thus, we urge the Commission to also consider tools that would directly address the over-concentration issues where they are already occurring, such as mandatory buffers from urbanized land uses, and/or acreage caps on individual growing operations.

- **Legal Nonconforming Status.** We've heard Assistant County CEO Melekian comment on several recent occasions that investigation and enforcement actions on operations claiming "legal nonconforming" status would be a priority action of the cannabis compliance team going forward. We applaud this effort and encourage County staff to not only investigate the validity of claims of legal nonconforming status, but to also ensure that those truly qualifying as legal nonconforming have not illegally expanded their operations beyond the scope of the operation at the time legal nonconforming status was conferred. The burden of proof must be placed on the applicant to demonstrate their valid "legal nonconforming" status and the scope of their claimed vested rights. The recent enforcement case involving Mr. Brand's Arroyo Verde Farms in Carpinteria underscores the types of illicit facilities expansion and unpermitted activities that is likely occurring in these mostly unregulated "legal nonconforming" operations. Investigation and enforcement actions on claimed "legal nonconforming" operations is particularly timely as many of the operations' provisional licenses are set to expire soon.
- **Permit Processing.** We continue to have several concerns with the permit processing of commercial cannabis applications:
 - Unresponsive applicants or inactive permit applications cannot remain in an "awaiting applicant action" status indefinitely. Given a reasonable amount of time, consistent with the Permit Streamlining Act and any County administrative practices, inactive or incomplete applications should be closed out and any associated provisional licenses revoked. Non-cooperative or non-compliant applicants cannot be rewarded with the ability to continue to operate under constantly-extended state provisional licenses while remaining outside of the County's regulatory authority. The current practice where applicants have no incentive to efficiently complete the

- permitting process only serves to undermine the County's efforts to bring the commercial cannabis industry into regulatory compliance.
- We understand that investigating the permit status of existing structures and improvements on properties where commercial cannabis activities are proposed is cited as one of the reasons for protracted permit processing times, and we see that one of the actions being contemplated by the Planning Commission is to reconsider this practice, presumably in an effort to speed up the permitting process and bring existing operations into compliance with current requirements sooner. This is a laudable endeavor, however, having reviewed all or most of the pending applications for cannabis cultivation facilities in the Carpinteria Valley, it is apparent that many of the prospective properties have multiple, and in some cases, extensive unpermitted structures and zoning or building violations. In light of previous concerns the City has raised with respect to the amount of greenhouse structures located in the Carpinteria Agriculture Overlay compared to what County staff believes is actually permitted, we respectfully disagree with this recommendation to do away with zoning compliance investigations as part of the cannabis permit application review. Gaining compliance with the County's cannabis regulations cannot and should not come at the expense of also ensuring compliance with other critical County regulations like the acreage caps on greenhouse-related construction in the Carpinteria Valley.
 - We previously raised questions about the County's reliance on an uncertified environmental document (Program EIR for the Coastal Zone) for CEQA compliance review of individual permit applications within the Coastal Zone. To date we have not seen a formal response from County staff to these questions other than a statement at the October 2, 2019 Planning Commission workshop that staff would look into the matter further and report back. We continue to believe this is an important procedural question both for pending CDP applications in the Coastal Zone and for any contemplated amendments to Article II's cannabis regulations.

Once again, we appreciate your Commission's willingness to listen to the City's concerns and recommendations, and your commitment to improving the cannabis regulatory program for the benefit of all residents of Santa Barbara County. The City looks forward to continuing to work with the County on these matters.

Yours,



Steve Goggia, Community Development Director
City of Carpinteria

Enc. January 21, 2020 letter to County Planning Commission

Cc. Santa Barbara County Planning Commission
City Council Members
Steve Goggia, Community Development Director
California Coastal Commission

ATTACHMENT A

CITY of CARPINTERIA, CALIFORNIA



January 21, 2020

Honorable John Parke, Chair
Santa Barbara County Planning Commission
c/o Planning and Development, Hearing Support
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: January 22, 2020 Planning Commission Agenda
Standard Agenda Item No. 2, Cannabis Zoning Ordinance Amendments

Honorable Chair Parke:

The City of Carpinteria (“City”) strongly supports efforts by County staff and decision-makers to revisit the County’s adopted cannabis land use and licensing regulations, and to consider possible revisions to improve the effectiveness of said regulations and address unforeseen issues at the time of adoption of these regulations. The City has been closely involved in the County’s legislative process since August 2017, and since that time the Carpinteria community has been directly and negatively impacted by the shortcomings in the County’s existing regulatory programs. Based on these experiences and observations, the City has identified a number of recommended amendments for your consideration, which are summarized below:

- Require odor control for “legal nonconforming” operations;
- Limit and enforce qualifying circumstances for continued “legal nonconforming” status;
- Investigate claims of “legal nonconforming” status;
- Remove principal permitted use designation from cannabis cultivation activities;
- Ban cultivation on AG-I parcels less than 20 acres in size in the Coastal Zone, and require a Conditional Use Permit (CUP) for cultivation on AG-I parcels larger than 20 acres in size located within the Coastal Zone;
- Adopt more stringent odor abatement requirements including no detectable odors measures at the property lines of the parcel upon which cultivation is occurring, quarterly monitoring by County staff for compliance, and annual reporting and/or third-party verification of compliance to Planning Commission;
- Adopt more stringent operating standards for “indoor” and “mixed light” cultivation, including specifying construction standards (fully enclosed, solid, permanent structures) and operating standards (limitations/prohibitions on venting); and
- Adopt additional development standards to limit the size, proximity and concentration of cannabis cultivation activities in close proximity to urbanized areas.

Additional details and supporting evidence in favor of these recommended amendments are provided below.

Chapter 35, Article X. Medical Marijuana Regulations

- Require odor control for “legal nonconforming” operations. At the July 16, 2019 County Board of Supervisors (“BOS”) hearing, a motion was made by Supervisor Williams and seconded by Supervisor Hartman to propose amending Article X to require existing “legal nonconforming” cannabis cultivators to have odor control in place by September 3, 2019 in order to continue to qualify for an Article X Exemption. The motion directed staff to refer the contemplated amendment to the County Planning Commission for a recommendation and to return to the BOS with recommendations for the introduction of ordinance amendments as appropriate. The motion was adopted by the Board in a 5-0 vote.

To date, as far as the City is aware, no further action has been taken on this effort to amend Article X. In light of the current situation, which has no apparent end in sight, whereby existing “legal nonconforming” cultivators are allowed to continue operating indefinitely while pursuing entitlements for their commercial cannabis operations, the City believes efforts such as that proposed by Supervisor Williams to instate some semblance of operating standards on existing “legal nonconforming” cannabis operations sooner rather than later should be a top priority for further consideration.

- Close Article X “Loopholes.” The City would also support efforts to close the loop on Article X exemptions. For example, inactive or incomplete permit applications, or unresponsive applicants that extend beyond the timelines provided for in the Permit Streamlining Act should have their applications closed out and voided, and be stripped of their Article X “legal nonconforming” status and State provisional licenses. If applicants are not making a good faith effort toward timely permit issuance and compliance, they should not be rewarded with the ability to continue operating outside of the County’s regulatory authority indefinitely.

Likewise, applicants who are found to have, or be utilizing unpermitted structures or improvements as part of their “legal nonconforming” cannabis operations should not be eligible for exemption status under Article X. By definition, if a use is utilizing unpermitted structures or improvements then it cannot be legal nonconforming.

- Investigate claims of “Legal Nonconforming” status. The City would also support efforts to investigate and validate claims and signed affidavits used for qualifying for “legal nonconforming” status pursuant to Article X. It is widespread belief among many that if the County investigated the validity of such claims, they would find that in many cases, alleged “legal nonconforming” cannabis operations were not in existence prior to the January 19, 2016 amortization date, or if they were, they were of a significantly smaller scope and extent. Pursuant to the County’s own nonconforming structures and uses chapter in Article II, extension or expansion of nonconforming uses are only allowed under limited circumstances where no structural alterations have been made, and where the nonconforming use has not extended beyond the building that was occupied at the time the use became nonconforming (see Article II, Division 10, Section

35.161(2)). By their very nature, most if not all of the pre-2016 medical marijuana cultivators operating in compliance with State medical marijuana laws at the time operated under small collective or cooperative models. Such operations spanning multiple greenhouses and covering tens- or even hundreds- of thousands of square feet were highly unusual, if at all present. Thus, it is likely that many of the alleged “legal nonconforming” operators have significantly expanded their operations beyond the limits of their eligible legal nonconforming use. The City recognizes that investigating all signed affidavits for legal nonconforming status would be time and resource-intensive. Thus, the City recommends investigations and any related enforcement efforts prioritize those “legal nonconforming” operators who have been the subject of repeated odor, nuisance or other complaints.

Chapter 35, Article II. Coastal Zoning Ordinance

With respect to possible amendments to the Coastal Zoning Ordinance, the City recommends consideration of the following:

- Remove Principal Permitted use designation for commercial cannabis cultivation activities in the AG-I zone district. Commercial cannabis cultivation is not like other typical forms of permitted agriculture, and in recognition of this, is not regulated in the same manner. Given the unique impacts of commercial cannabis and the regulatory challenges surrounding it, it is not appropriate for it to be classified as a principally permitted use. Removal of the principally permitted use designation would allow for such uses to be appealed to the California Coastal Commission, when warranted, to ensure cannabis operations are properly complying with the County’s certified Local Coastal Program (LCP) and the California Coastal Act.
- Adopt more stringent permit requirements for commercial cannabis cultivation in AG-I zone districts. Permit requirements for commercial cannabis activities located in the Coastal Zone should be on the same level, or more stringent, as what is required for the same uses in inland portions of the County. In 2019, the BOS adopted a ban on cannabis cultivation on AG-I lots smaller than 20 acres in size; and a requirement for a CUP for cultivation on AG-I lots larger than 20 acres in size, for all inland areas of the County. The same requirements should also apply in the Coastal Zone. Just like in the inland parts of the County, such limitations would provide a more protective buffer for urban uses, since smaller-sized AG-I parcels typically abut urbanized land uses, including but not limited to the County’s incorporated cities. Barring this, the City believes all commercial cannabis cultivation in the AG-I district located in the Coastal Zone should be subject to a major Conditional Use Permit. We note this is something previously supported and recommended by the County Planning Commission for consideration by the BOS.
- Adopt more stringent odor control requirements. The current odor abatement plan allows for use of vapor phase or activated carbon filtration systems, and must prevent odors from being experienced within residential zones, as determined by the Director. The current odor abatement plan relies on a complaint-based system to ensure ongoing

compliance. Despite many of the “legal nonconforming” cultivators claiming to have voluntarily installed allegedly compliant odor abatement systems, strong cannabis odors persist throughout the Carpinteria Valley. Efforts to prevent the odors from being detected within residential zones are not succeeding; ongoing complaints from residents throughout the Carpinteria Valley attest to this. All of this suggests that the current odor control requirements remain insufficient to satisfactorily address nuisance odors.

The City recommends the odor abatement requirements be strengthened to require no detectable odors off site, as measured at the property lines of the parcel upon which cultivation is occurring. Further, instead of relying exclusively on a complaint-based system, the ordinance should be amended to require either County staff or independent third party certification that the odor control system is compliant upon initial installation and operation, and remains compliant as verified by ongoing quarterly compliance monitoring. Likewise, we would like to see a requirement for an annual compliance report to the Planning Commission describing how each permittee has succeeded in complying with all of the required commercial cannabis development standards, including but not limited to odor abatement. Lastly, in certain situations, such as when cultivation occurs in close adjacency to residential neighborhoods or schools, it may be that vapor phase systems are inadequate and only fully enclosed structures with carbon filtration would be adequate.

- Adopt commercial cannabis-specific construction and operation standards for “indoor” or “mixed light” cultivation as a complement to more stringent odor control standards. Currently, the definition of “greenhouse” in Article II is generously worded to include any *“structure with permanent structural elements (e.g., footings, foundations, plumbing, electrical wiring, etc.) used for cultivation and to shade or protect plants from climatic variations. Any hothouse or plant protection structure that does not fall within the definition of shade structure or hoop structure shall be included in the definition of greenhouse.”* Thus, open-sided and largely air-permeable “greenhouses” such as those shown in the attached photographs are deemed to qualify as meeting the definition of “indoor” or “mixed light” cultivation despite the fact that Article II does not appear to define “indoor” or “mixed light,” and the very design and function of these highly air-permeable greenhouses makes it virtually impossible to effectively capture and neutralize all cannabis-related odors.

Further, it appears that even with vapor phase odor control systems installed at many of the currently operating “legal nonconforming” cannabis cultivation facilities, strong cannabis odors consistently persist in areas with high concentrations of cannabis cultivation activity, such as along Via Real near Santa Claus Lane, near the Casitas Pass Road and Foothill Road/SR 192 intersection, and along Foothill Road/SR 192 west of Carpinteria High School. These odors are most noticeable in the evenings and mornings when winds are calm and temperatures are lower, and appear to coincide with the venting practices of the greenhouses. The persistent and ongoing presence of strong cannabis odors in these areas suggests that either the vapor phase systems employed are inadequate and are being defeated by operating practices such as venting or open-sided greenhouses.

To address these issues in concert with more stringent odor control requirements, the City would like to see “indoor” and “mixed light” cultivation only be allowed to occur in structures that are sufficient to capture and control all odors. Venting, if allowed at all, must be done in such a way that cannabis odors can be successfully intercepted and controlled.

- Adopt development standards to address over-concentration of cannabis cultivation facilities near urbanized areas. Certain areas of the County, including the Carpinteria Valley, have seen a proliferation of cannabis cultivation activities in the wake of the adoption of the County’s cannabis regulations. According to the County’s own estimates, even more cultivation is anticipated for the Carpinteria Valley if all or most of the pending permits for cultivation are ultimately approved. Many of the properties engaged in cannabis cultivation occur in concentrated clusters of adjacent greenhouses, many of which are located immediately next door to urbanized areas such as residential neighborhoods or schools within the City of Carpinteria. Allowing multiple, large-scale cultivation facilities to be concentrated in close proximity to urbanized areas unfairly focuses and magnifies the bulk of negative impacts associated with cannabis cultivation on the sensitive receptors in these areas.

Efforts to avoid concentration of multiple, large-scale cultivation facilities in close proximity to urban areas are needed. There are a number of means available to achieve this, including but not limited to limitations on the size of individual permitted cannabis operations, separation requirements between separate cannabis operations and/or amending buffer requirements to include residential land uses as a protected sensitive receptor. The City would support an amendment that considers some combination of all of the above approaches as being the most appropriate means to address problems with over-concentration. With respect to buffers and/or separation requirements specifically, the City would also recommend the buffer measurement method be revised to be measured from property line to property line. The current practice of instead measuring from the premises of the cultivation activity for the required sensitive receptors buffers (from schools, for example) represents a vague, difficult to enforce and inconsistent standard. Measuring property line to property line provides greater protection for sensitive receptors and is easier for all to understand and comply with.

Permit Processing

At the July and August 2019 BOS hearings, staff presented various options for the Board’s consideration that were intended to streamline the permitting and licensing review processes in an effort to reduce the lead up time to achieving full compliance with the County’s cannabis regulations for all operators. The Board expressed their support for many of these efforts and adopted motions directing staff to return with further details and materials to initiate the needed ordinance amendments. Likewise, the Board also directed staff to return with details on the necessary staffing and funding resources to address the permitting backlog and bring the cannabis industry into compliance with the County’s regulatory program.

To date, as far as the City is aware, there have been no further actions taken on these efforts by the County Planning Commission or BOS. The City cautiously endorsed these efforts previously, with the understanding that the sooner cannabis operators are fully permitted and licensed, the sooner the full regulatory authority of the County can be applied to non-compliant operations. The City remains in general support of these efforts and encourages County staff and decision makers to allocate the necessary resources to bring these amendments to fruition.

CEQA Review

At the County Planning Commission's October 2, 2019 workshop concerning the Program Environmental Impact Report adopted for the County's cannabis land use ordinance and licensing program, the City raised a series of procedural questions about the County's reliance on an uncertified environmental document (within the Coastal Zone) for CEQA compliance review of individual permit applications within the Coastal Zone. County staff informed the Planning Commission that they would be looking into this and returning to the Commission with additional information prior to processing any further cannabis permits in the Coastal Zone. While we note that no further permit applications occurring within the Coastal Zone have been acted upon since the workshop, we have yet to hear or see anything new from County staff in response to our questions. We bring this up here again in anticipation that should the County decide to pursue any of the above amendments to the Article II cannabis regulations, additional CEQA review will be warranted.

We appreciate your careful attention to our suggested revisions and your commitment to improving the cannabis regulatory program for the benefit of all residents of Santa Barbara County. The City looks forward to continuing to work with the County on these matters.

Yours,



Dave Durlinger, City Manager
City of Carpinteria

Enc. Greenhouse Photographs

Cc. Santa Barbara County Planning Commission
City Council Members
Steve Goggia, Community Development Director
California Coastal Commission



The above open-sided greenhouses located at 1296 Cravens Lane are currently being used to cultivate cannabis under the County's Article X provisions and a State Provisional license.



The above greenhouses, located at 1552 Casitas Pass Rd (APN 001-060-040) have a pending permit (19CDP-00000-00058) to utilize these open-sided "mixed light" structures for cultivation of cannabis.