

# CITY of CARPINTERIA, CALIFORNIA

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December 24, 2017

Cal Cannabis  
Attn: Richard Parrott, Director  
1220 N Street  
Sacramento, CA 95814  
Email: [calcannabis@cdfa.ca.gov](mailto:calcannabis@cdfa.ca.gov)

Department of Consumer Affairs – Bureau of Cannabis Control  
Attn: Lori Ajax, Chief  
P.O. Box 138200  
Sacramento, CA 95813-8200  
Email: [bcc@dca.ca.gov](mailto:bcc@dca.ca.gov)

To the State Licensing Authorities:

This letter concerns a decision made by the Santa Barbara County (County) Board of Supervisors (Board) to provide letters for medical marijuana cultivators in the County to obtain temporary licenses without any evidence that the cultivators are legal under the County's Zoning Ordinance. The City Council (Council) for the City of Carpinteria (City) believes that this decision will lead to serious impacts to the City and its residents and that the issuance of a temporary license based on the County letter would violate State law and regulations. There is currently a high concentration of cannabis operations in unincorporated County areas in close proximity to the City – some of which may not be legal – that have been causing negative impacts to the City. The City Council urges the State to decline temporary licenses for any applicant in the County until the County has made an individual determination based on evidence that the applicant is legal.

The Council wants to make clear up front that it is not opposed to certain cannabis operations in the unincorporated County, including cultivation, when conducted in a legal and safe manner that appropriately mitigates negative impacts to the City and its residents. The Council is providing this letter because it is concerned about the potential for illegal operations.

Article X of the County's Zoning Ordinance prohibits medical marijuana cultivation in all areas of the County, with the exception of minor personal cultivation and cultivation operations existing prior to January 19, 2016 and operating legally under State law. (County Code § 35-1003.) Cultivation operations in existence prior to January 19, 2016 and legal under State law are considered legal non-conforming uses.

The County admits that it does not currently possess information necessary to determine what cultivation operations existed prior to January 19, 2016 and were operating legally under State law. Without evidence of the legal status, the County cannot represent that an applicant is permitted to cultivate marijuana. (See *City and County of San Francisco v. Board of Permit Appeals* (1989) 207 Cal.App.3d 1099 [applicant has burden of proof to demonstrate legal non-conforming status and County has a duty to make decisions of legal non-conforming status based on evidence].)

County staff presented the Board with the option to make individual adjudicated decisions for each applicant claiming legal non-conforming status based on evidence and a hearing. The Board declined this approach and instead approved the issuance of a letter upon an applicant's request for a temporary license. (Form of letter attached hereto.) The letter states that the County's Zoning Ordinance prohibits

## Members of City Council

Fred Shaw - *Mayor*  
Wade T. Nomura - *Vice Mayor*  
Al Clark  
J. Bradley Stein  
Gregg A. Carty

medical marijuana cultivation unless the operation was in existence prior to January 19, 2016. To receive this letter, the applicant must attach an affidavit declaring under penalty of perjury that its cultivation operation satisfies the requirements to be classified as a legal non-conforming use. Attaching documentation as evidence of legal non-conforming status is optional. The letter specifies that the County has not made a determination on the applicant's claim of legal status.

As you are aware, Business and Professions Code section 26050.1 provides that a State licensing agency may issue a temporary license if the applicant submits required information, which includes "a copy of a valid license, permit, or other authorization, issued by a local jurisdiction, that enables the applicant to conduct commercial cannabis activity at the location requested for the temporary license." Regulations further clarify that an "'other authorization' shall include, at a minimum, a written statement or reference that clearly indicates the local jurisdiction intended to grant permission to the applicant entity to conduct commercial cannabis activity at the premises." (14 CCR § 5001(c)(12); 3 CCR § 8100(b)(6) [emphasis added].)

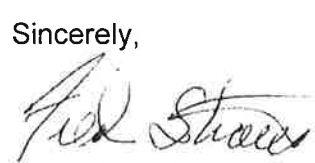
The letter approved by the Board does not meet the standard of the statute or regulation. It does not "enable" the applicant to conduct its cultivation operation, and it does not clearly indicate that the County intended to grant permission to the applicant to conduct the cultivation operation. For this reason, County staff has stated that it "does not believe this letter will be sufficient and will fail to satisfy the State licensing authorities." (Board Agenda Letter for December 14, 2017 Board meeting, p. 18, available at <https://santabarbara.legistar.com/Calendar.aspx#current>.)

There is currently a high concentration of cannabis operations in unincorporated County areas in close proximity to the City. City residents have been experiencing negative impacts from these operations, most acutely in the form of noxious odors emanating from growing operations. A number of these operations may not be legal under the County's Zoning Ordinance. The City Council is seriously concerned that the County's willingness to issue these letters without any evidence supporting a legal non-conforming determination will lead to the legitimization of existing illegal operations because they began operations after January 19, 2016 or were not operating legally under State law. The Council is also concerned that enabling cultivators to obtain a temporary state license based only on an affidavit without any mechanism for the County to determine if the affidavit is true will incentivize operators to submit false affidavits to begin operating immediately rather than wait for the County's permanent licensing program to come into effect. This will cause further negative impacts on the City and its residents.


The City Council urges all State licensing authorities to decline to issue any temporary license to an applicant in Santa Barbara County unless the County makes a determination based on evidence that the applicant actually meets the requirements of the County's Zoning Ordinance to be classified as legal non-conforming and provides proof of this determination to the licensing authority. This is the only approach allowed by law. Unless the County makes a determination, based on evidence, that an applicant is legal non-conforming, the applicant is not eligible for a temporary license. The State should not risk violating the law by issuing temporary licenses in these circumstances.

Thank you for considering this letter.

Sincerely,



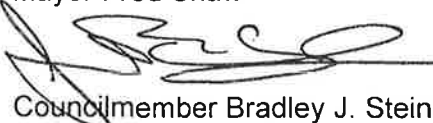
Mayor Fred Shaw



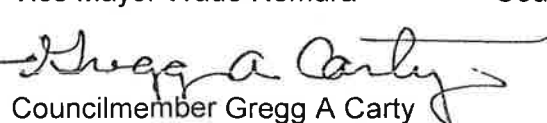
Vice Mayor Wade Nomura



Councilmember Al Clark



Councilmember Bradley J. Stein



Councilmember Gregg A. Carty

Cc: Governor Jerry Brown; Attorney General Xavier Becerra; Mona Miyasato, CEO, Santa Barbara County