

Alexander, Jacquelyne

From: Board Letters
Subject: FW: City of Carpinteria comment on Item 3 - cannabis issues



Chair Williams and Supervisors:

This email is submitted on behalf of the City of Carpinteria as comment on Item 3 on the Board's April 10 agenda - consideration of cannabis business license regulations and policy for transition period.

For the reasons stated below, the City:

- 1. Supports adoption of the proposed cannabis business licenses regulations.
2. Urges the Board to adopt staff's proposed Option 2A for the transition period before the amendments to the Coastal Zoning Ordinance take effect.
a. Before the Board adopts any policy for the transition period, details need to be provided on how the policy will be implemented.

Cannabis Business Licensing

The City thanks the Board for supporting its request for cultivation caps within the Carpinteria Agricultural Overlay and Coastal Zone. The City also appreciates your staff's efforts to craft regulations that meet this objective.

Policy for Transition Period

The City strongly believes that in the interim period before the County's Cannabis Land Use Ordinance is certified by the Coastal Commission and becomes operative (Transition Period), the only actions the County should take with respect to cannabis operations is to maintain the status quo.

Allowing new and expanded uses in the interim period could have unanticipated consequences that the County may not be anticipating, particularly in the Coastal Zone. As the County is aware, the Coastal Commission often requires revisions through the certification process.

Furthermore, authorizing new and expanded uses during the Transition Period would run afoul of Planning and Zoning Law and the Coastal Act.

An interim authorization process that allows applicants to conduct uses not currently allowed by the County's Coastal Zoning Ordinance ("CZO") and prior to the regulations that the Board has determined are necessary to control proposed cannabis uses taking effect runs directly counter to the purpose of planning and zoning laws. A zoning scheme is akin to a contract whereby landowners forego certain rights to use land in the assurance that the use of neighboring property will be similarly restricted, in order to enhance the overall community welfare. (*Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles* (1974) 11 Cal. 3d 506, 517.) If the County authorizes new cannabis uses during the Transition Period, it is breaking the contract that exists between landowners in the Coastal Zone that only the activities allowed under the CZO shall be permitted. In *Neighbors in Support of Appropriate Land Use v. Cty. of Tuolumne* (2007) 157 Cal.App.4th 997, 1009, the court found that a County violated this principle when it approved a use by Development Agreement that was not allowed in the zone, rather than rezoning the property. By authorizing cannabis activities before the Coastal Commission has certified the Cannabis Ordinance, the County would be creating the same ad hoc exceptions to zoning that the court struck down in the *Tuolumne* case.

The County cannot legally take actions that would be inconsistent with its own LCP, such as determining compliance with non-existent regulations or facilitating the issuance of state licenses for an activity not currently allowed within the Coastal Zone. There are no provisions in the County's existing CZO for commercial cannabis uses. Nearly all cannabis uses would meet the definition of "development" pursuant to the Coastal Act and the County's CZO and therefore would require issuance of a Coastal Development Permit. (See CZO §§ 35-58 and 35-169.2(1).) Until the proposed regulations allowing cannabis operations have been certified by the Coastal Commission, the County cannot make the findings required for issuance of a Coastal Development Permit to any cannabis operation that would involve development. (See CZO § 35-169.5 [findings required for approval of Coastal Development Permit include that the project conforms to the Local Coastal Land Use Plan and laws, rules, and regulations pertaining to zoning].)

The LCP provides that "[a]ny proposed amendment to the Local Coastal Program shall not take effect until it has been certified by the Coastal Commission." (CZO § 35-180.7.) Allowing development not yet allowed by the County's LCP directly undermines this requirement and violates the Coast Act. (See *Charles A. Pratt Constr. Co. v. California Coastal Comm'n* (2008) 162 Cal.App.4th 1068, 1075 [LCP's are not merely a matter of local law; they embody state policy].) The County should not be approving or otherwise allowing any new or expanded cannabis uses until the Cannabis Ordinance is certified through the LCP Amendment process and becomes effective.

Finally, the Program EIR for the County's Cannabis Ordinance did not review the impacts of an interim approval process for new and expanded operations and, since such operations would lead to new impacts on the environment, the County cannot rely on an exemption. **The County would be required to prepare an additional environmental document to analyze the effects of any interim authorization process that goes beyond maintaining the status quo.**

For these reasons, the City urges the Board to adopt Option 2A and strictly maintain the status quo until the County's Cannabis Land Use Ordinance is certified and in effect.

Thank you for considering these comments.

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