



LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: October 21, 2021

AGENDA ITEM # 2

Project Description

Applicant: County of San Bernardino Land Use Services Department

Community: Countywide

Location: Countywide

Project No: PMISC-2020-00005

Staff: Irene Romero

Proposal: Development Code Amendment to add Section 84.34.080 to Chapter 84.34, Division 4, Title 8 of the San Bernardino County Code relating to items typically used to facilitate the cultivation of cannabis, and an amendment to Section 86.09.090 of Chapter 86.09, Division 6, Title 8 of the San Bernardino County Code, classifying all violations of the Development Code as misdemeanors unless otherwise stated.

Newspaper Publication Date: October 11, 2021

Report Prepared By: Irene Romero

PROJECT DESCRIPTION

This proposal includes two amendments to the San Bernardino County Development Code (Development Code), which includes: (1) the addition of Section 84.34.080 to Chapter 84.34, related to Commercial Cannabis Activity, to declare equipment and structures used to facilitate unlawful cannabis cultivation as a public nuisance subject to abatement; and (2) an amendment to Section 86.09.090 of Chapter 86.09, related to Enforcement, to provide greater flexibility for the County to address more severe violations of the County Code.

BACKGROUND

Since the statewide legalization of recreational cannabis use, illegal cultivation sites have expanded throughout the unincorporated areas of the County at an exponential rate. These illegal cultivation sites have overwhelmed County resources and negatively impacted the wellbeing of the County's residents.

The operators of the illegal cultivation sites regularly utilize certain equipment and structures to facilitate the illegal cultivation of cannabis, which are critical to their operations. Furthermore, when these illegal cultivation sites are shut down by County employees, the operators typically abandon their equipment and structures, leaving a blight on our desert communities. These items, when found at illegal cannabis cultivation

sites and directly connected to cannabis cultivation activity, can be declared a public nuisance and subject to abatement and destruction.

Pursuant to Government Code Section 25132, violations of a county ordinance are defaulted as a misdemeanor unless by ordinance it is made an infraction. Currently, all violations of the Development Code, with limited exceptions, are classified as infractions, which prevents the County from prosecuting more egregious violations as misdemeanors. In order to provide greater flexibility to the County to address more severe violations of the Development Code, reclassifying all violations of the Development Code as misdemeanors consistent with Government Code Section 25132 is necessary. While a misdemeanor violation can always be charged as a lesser infraction, a violation that is an infraction cannot be charged as a misdemeanor, even where the conduct and harm caused warrants such prosecution.

ANALYSIS OF PROPOSAL

Content of the Proposed Ordinance: The Development Code Amendment represent staff's recommendation to address the nuisance of abandoned equipment and structures, as well as severe development code violations, associated with illegal commercial cannabis activity. The proposed Development Code Amendments are summarized as follows:

- **Commercial Cannabis Activity** – Add Section 84.34.080 (Items Used To Facilitate Unlawful Cannabis Cultivation) to Chapter 84.34, identifying equipment and structures typically used to facilitate commercial cannabis cultivation, when located on a cannabis cultivation site and directly connected to cannabis cultivation activity, to be declared a public nuisance and subject to abatement.
- **Enforcement** – Amend Section 86.09.090 (Criminal Actions) of Chapter 86.09 to reclassify all violations of the Development Code as misdemeanors unless the violation is specifically declared to be an infraction.

ENVIRONMENTAL DETERMINATION

The Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it can be determined with certainty that the Development Code Amendment will not have a significant effect on the environment.

FINDINGS

The following findings must be made by the Planning Commission in its recommendation to the Board of Supervisors to approve the proposed Development Code Amendment:

1. The proposed ordinance amending the Development Code is consistent with the Countywide Plan and any applicable specific plan because it supports Policy LU-4.5, which provides that “We require that new development be consistent with and reinforce the physical and historical character and identity of our unincorporated communities, as described in Table LU-3 and in the values section of Community Action Guides. In addition, we consider the aspirations section of Community Action Guides in our review of new development.” The proposed ordinance will amend the Development Code to allow the County to more effectively prevent and regulate commercial cannabis activity that is prohibited by Chapter 84.34 of the Development Code.
2. The proposed ordinance amending the Development Code would not be detrimental to the public interest, health, safety, convenience or welfare of the County. The proposed ordinance is designed specifically to enhance the public interest, health, safety, convenience and welfare of the County by providing needed updates in the regulations imposed on development and authorize a community benefit by allowing the County to effectively regulate commercial cannabis activity that is prohibited by Chapter 84.34 of the Development Code.
3. The proposed ordinance amending the Development Code is internally consistent with other applicable provisions of the Development Code. The proposed ordinance clarifies the current prohibition of commercial cannabis activity by identifying items typically used to facilitate unlawful cannabis cultivation and provides greater clarification on the applicable enforcement options authorized by the Development Code.
4. The proposed amendment is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it can be determined with certainty that implementation of the proposed ordinance would not have a significant effect on the environment.

RECOMMENDATION

That the Planning Commission recommend that the Board of Supervisors take the following actions:

1. **FIND** that the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3);
2. **ADOPT** the findings as contained in the staff report;
3. **ADOPT** the proposed Ordinance to add Section 84.34.080 to Chapter 84.34, Division 4, Title 8 of the San Bernardino County Code, and amend Section 86.09.090 of Chapter 86.09, Division 6, Title 8 of the San Bernardino County Code, relating to illegal cultivation sites and classifying violations as misdemeanors unless otherwise stated; and
4. **DIRECT** the Clerk of the Board to file a Notice of Exemption.

ATTACHMENTS

Exhibit A: Proposed County Development Code Section Changes (Red-lined Version)

EXHIBIT A

Proposed County Development Code Section Changes (Red-lined Version)

§ 83.34.080 Items Used To Facilitate Unlawful Cannabis Cultivation.

Items typically used to facilitate the unlawful cultivation of cannabis, when located at a property confirmed to be cultivating cannabis in violation of this Chapter, are hereby declared to be a public nuisance subject to abatement and discarding as provided by this Code. For purposes of this Section, items typically used to facilitate the unlawful cultivation of cannabis include, but are not limited to:

- a) Temporary structures in which cannabis cultivation is observed occurring such as hoop houses, greenhouses, shade structures, sheds, gazebos, huts, and similar facilities;
- b) Fencing or shielding actively used to conceal or obstruct view of cannabis cultivation;
- c) Electrical equipment such as lights, fans, evaporation coolers, heating and air-conditioning, irrigation pumps, well pumps, and generators that are being utilized to grow cannabis; and,
- d) Irrigation systems including above-ground, subterranean, and/or drip irrigation being utilized to cultivate cannabis.

§ 86.09.090 Criminal Actions.

(a) Notwithstanding any other provision of the San Bernardino County Code, each person violating, causing, or allowing a violation of any provision of this Development Code or any permit or condition of approval granted pursuant thereto, shall be guilty of ~~an infraction, unless the violation is specifically declared to be~~ a misdemeanor, unless the violation is specifically declared to be an infraction.