



# LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

**HEARING DATE: October 4, 2018**

**AGENDA ITEM # 3**

Project Description

**Applicant:** County of San Bernardino Land Use Services Department

**Community:** Countywide

**Location:** Countywide

**Project No:** P201800318

**Staff:** Christney Barilla

**Proposal:** A Development Code Amendment to modify provisions relating to the enforcement actions for unpermitted uses of land, structures, and/or occupancy of structures pending land use approval. This amendment also includes corrections of minor errors and clarification of various sections of the County Development Code including: FEMA Floodplain requirements, Commercial Cannabis regulations and infrastructure requirements for residential construction.

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Newspaper Publication Date: September 23, 2018

Report Prepared By: Christney Barilla

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## **PROJECT DESCRIPTION**

The proposal is a San Bernardino County Development Code (Development Code) Amendment to modify Sections 85.03.020, 85.03.090, and Subsection 85.03.120(b) to allow for unpermitted uses under enforcement actions to continue to operate during the entitlement process under certain limited circumstances. The amendment would also authorize alternative time limits as a condition of approval. In addition, this amendment provides for the correction of minor errors and addition of clarification to the FEMA Floodplain Subsection 82.14.050(d)(1) and Subsection 82.14.050(g)(1)(A) and (B), Commercial Cannabis Activity Section 84.34.030 and Subsection 84.34.050(a)(5) and Construction Standards for Multi Family Residences and Single Family Residences in Subsections 84.16.040(i)(2) and 84.21.030(j)(2) (the Ordinance).

The Ordinance revising the Development Code would modify Chapter 85.03 (Application Procedures) to provide for the stay of an enforcement action pending a land use decision. The Ordinance also includes correcting minor errors and/or adding clarification to various sections and subsections of the Development Code including revisions to the following topics: FEMA Floodplain requirements, Commercial Cannabis Activity and Infrastructure Requirements for Construction Standards of Multi Family Residence and Single Family Residence. All of the proposed amendments apply Countywide.

## **BACKGROUND**

The Land Use Services Department Code Enforcement staff, in cooperation with the Planning Division staff, sought to make improvements to the Development Code to advance enforcement efforts and planning processes when a land use application is submitted in response to an enforcement action. The proposed Ordinance would allow certain unpermitted uses of land, structures, and/or the use or occupancy of a structure to temporarily continue pending the decision on a land use application submitted in response to a code enforcement action if, in the discretion of the Director, the violation does not constitute a public nuisance for reasons independent of the applicant's failure to first obtain the required approval, the proposed use is allowed within the land use zoning district, the applicant demonstrates a willingness and ability to obtain the appropriate approval in a timely manner, the structure has not been declared unsafe or unfit for occupancy, and there are no unpaid fines resulting from any past or current enforcement action.

Additionally, the Land Use Services Department has an on-going program of identifying unnecessary complications within the Development Code, General Plan, and other documents prepared by the Department, and proposing clarifications to address those issues. Suggestions for document corrections are submitted by staff and other users to enhance these documents, making them more readable, functional, and complete.

## **ANALYSIS OF PROPOSAL**

Content of the Proposed Ordinance: The proposed Ordinance amends Chapter 85.03 of the Development Code. The primary purpose for the proposed amendment is that the Development Code lacks specific direction for the enforcement of the County Code in circumstances where a development or use permit application is received in response to a code enforcement action and when a stay in an enforcement action is appropriate while approvals are pending. Below are the principal changes to the Development Code:

- **Section 85.03.020** – content added to address the situation in which a land use application is submitted subsequent to an enforcement action. The proposed subsection (c) provides criteria that define when an unpermitted use may be allowed to temporarily continue. Specific findings must be made to allow the use to continue and stay an enforcement action pending the appropriate approvals. The proposed subsection (d) establishes the process and constraints of the agreement between the applicant and the Director.
- **Section 85.03.090** – content added to allow the review authority to establish different time limits as a condition of approval for applications submitted subsequent to an enforcement action.
- **Subsection 85.03.120(b)** – content added for the expiration of an inactive land use application and to allow enforcement actions to continue in instances where there

is unnecessary delay by the applicant.

Staff has also identified several sections and subsections of the Development Code that could benefit from clarification or correction. The proposed revisions represent staff's recommendations to correct these issues, and are summarized as follows:

- **Floodplain Safety Review Areas Development Standard** [Subsection 82.14.050 (d)(1) and 82.14.050(g)(1)(A) and (B)] – Subsection 82.14.050(g)(1)(B) was previously corrected in Ord. 4304 and then inadvertently the changes were reverted back to the preceding Development Code Update in Ord. 4333. This change is required by FEMA for a manufactured home within Zone A of the Floodplain Safety Review Area. This Amendment also adds clarification of flood depth in addition to flood elevation to Subsection 82.14.050 (d)(1) and 82.14.050(g)(1)(A).
- **Commercial Cannabis Activity** [Section 84.34.030 and Subsection 84.34.050(a)(5)] – content is added to include the misdemeanor violation and to specify that a hospice must be licensed to qualify for an exemption.
- **Infrastructure Requirements** [Subsections 84.16.040 (i)(2) and 84.21.030 (j)(2)] – these subsections are being amended to provide clarification for the eligibility of a waiver or modification of requirements associated with street improvement standards for residential development.

## **ENVIRONMENTAL DETERMINATION**

The proposed Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to §15061(b)(3) of the CEQA Guidelines, because it can be determined with certainty that the proposed action does not have the potential to have a significant effect on the environment.

## **FINDINGS**

The following findings and the evidence to support such 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 General Plan and any applicable community plan or specific plan because it will allow the Department to more effectively enforce the provisions of the Development Code. The proposed Ordinance to amend the Development Code will continue to protect public health and safety, consistent with the following excerpts from the Countywide Vision and the General Plan. In addition, the corrections of minor errors, clarifications of existing language, correction of an inadvertent change to a previous ordinance and/or implement policies that were previously not addressed:

*We envision a model community which is governed in an open and ethical manner, where great ideas are replicated and brought to scale, and all sectors work collaboratively to reach shared goals.*

Goal LU 1: The County will have a compatible and harmonious arrangement of land uses by providing a type and mix of functionally well-integrated land uses that are fiscally viable and meet general social and economic needs of the residents.

Policy LU 1.2: The design and siting of new development will meet locational and development standards to ensure compatibility of the new development with adjacent land uses and community character.

Policy LU 7.2: Enact and enforce regulations that will limit development in environmentally sensitive areas, such as those adjacent to river or streamside areas, and hazardous areas, such as flood plains, steep slopes, high fire risk areas, and geologically hazardous areas.

Policy N 1.7: Prevent incompatible land uses, by reason of excessive noise levels, from occurring in the future.

Goal ED 4: The County will assist development of small businesses and encourage new businesses of all sizes.

Policy ED 4.1: Promote commercial development that enhances the County's economic base, particularly for small businesses, and provides jobs for its residents.

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 Ordinance is proposed with the express purpose of preserving public health and safety, by allowing the Department to more effectively enforce the provisions of the Development Code.
3. The proposed ordinance amending the Development Code is internally consistent with other applicable provisions of the Development Code. For the purpose of maintaining consistency throughout the Development Code, multiple sections of the Development Code are included in the proposed Ordinance.
4. The proposed ordinance amending the Development Code is exempt from the requirements of CEQA pursuant to state CEQA Guidelines §15061(b)(3) because it

can be determined that implementation of the proposed ordinance would not have a possibility for causing a significant effect on the environment.

## **RECOMMENDATION**

Staff recommends that the Planning Commission take the following actions:

1. **Direct staff to prepare an Ordinance** amending Title 8 of the County Code to make the amendments to the Development Code as recommended in the staff report and illustrated in the draft Ordinance, presented in Exhibit A as red-line changes to the existing Development Code text (the Ordinance).
2. That pursuant to Subsection 86.12.040(b), the Planning Commission **RECOMMEND** the following actions to the Board of Supervisors:
  - A. **ADOPT** the proposed Ordinance amending Title 8 of the County Code (Development Code) modifying certain provisions regarding enforcement actions related to certain unpermitted uses of land, structures, and/or the use or occupancy of structures in Sections 85.03.020, 85.03.090, and Subsection 85.03.120(b); and the corrections of minor errors, clarifications of existing language, correction of an inadvertent change to a previous ordinance and/or implement policies that were previously not addressed in Subsections 82.14.050(d)(1), 82.14.050(g)(1)(A) and (B), Subsections 84.16.040(i)(2) and 84.21.030(j)(2), Section 84.34.030 and Subsection 84.34.050(a)(5).
  - B. **ADOPT** the findings as contained in the staff report.
  - C. **DIRECT** the Clerk of the Board to file a Notice of Exemption.

## **ATTACHMENTS**

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

**EXHIBIT A**

Proposed County Development Code Changes  
(Red-lined Version)

- (2) **Review procedures.** A project proposed in this area shall be subject to a Floodplain Development Standards Review conducted by the Building and Safety Division based upon the determination by the Land Development Division of the Land Use Services Department. This review shall ensure that the proposed project complies with this Development Code regarding flood protection measures.
- (c) **Undetermined flood hazards.** This area includes areas of undetermined, but possible, shallow flooding as determined by the County, the Flood Control District, or other governmental agency. The following standards shall apply to property within this area:
  - (1) **Final building plan content.** The final building plans that are submitted for approval shall show the approved location and mitigating measures.
  - (2) **Development standards.** Development Standards for the undetermined flood hazard Area shall be determined on a case-by-case and shall be dependent upon the specific of the project. A Floodplain Development Standards Review may be required.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009); Amended Ordinance 4163 (2012); Amended Ordinance 4333 (2017)

#### **82.14.050 Development Standards for Floodplain Safety Review Areas**

- (a) **Anchoring.** All new construction and substantial improvements of structures, including manufactured homes, shall be anchored to the foundation to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. If a structure is elevated on fill as specified in Subsection 82.14.050(c), and 82.14.050(d)(1), the anchoring requirement shall be satisfied. Other alternative anchoring techniques that are effective may be considered.
- (b) **Construction materials and methods.** All new construction and improvements of structures whether substantial or not, including manufactured homes, shall be constructed:
  - (1) With materials and utility equipment installed below the base flood elevation or the highest adjacent grade that are resistant to flood damage. This would include but not be limited to water resistant lumber, floor coverings, adhesives, paints, masonry construction and finishes, water proof electrical systems, and mechanical footings, or other acceptable materials measures. (See FEMA Technical Bulletin TB 2-93.)
  - (2) Using methods and practices that minimize flood damage. This would include but not be limited to elevating the structure, aligning the structure to be parallel

- (3) with water flow, increasing the structural designs to withstand hydrologic and hydrographic sources, and increasing the depth of footings.
  - (4) With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (5) So that adequate drainage paths are provided around structures on slopes to guide flood waters around and away from proposed structures.
- (c) **Grading.** If fill is placed to elevate pads above base elevation, it must be demonstrated that fill will not settle and is protected from erosion, scour, or differential settlement, as follows.
- (1) The pad elevation shall be certified to meet or exceed the elevation required by the applicable Floodplain Safety Review Area, and it must be demonstrated that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.
  - (2) Fill shall be compacted to 95 percent per ASTM (American Society of Testing Materials) Standard D-698.
  - (3) Fill slopes shall be no steeper than two feet horizontal to one foot vertical ratio unless substantiating data for steeper slopes is provided, and the slopes are approved by the County.
  - (4) Fill slopes adjacent to a water course may be required to be armored with stone, rock or approved equal protection.
- (d) **Elevation and flood-proofing.**
- (1) **Residential Structures.** New construction and substantial improvement of any residential structure shall include having the lowest floor (including basement), elevated to one foot above base flood elevation/flood depth or two feet or more above the highest adjacent grade in the 100-year floodplain area, and one foot above highest adjacent grade in the 100 to 500-year floodplain area. Upon completion of the structure, the elevation of the lowest floor (including basement) shall be certified by a registered civil engineer or licensed land surveyor to be properly elevated above the floodplain elevation at the time of certification. The certification shall be provided on the current FEMA Elevation Certificate form to the Building Official. In accordance with FEMA regulations (Substantial Improvement & Substantial Damage), the following shall apply relative to existing residential structures and substantial improvements:



- (g) **Manufactured homes.** All new and replacement manufactured homes and additions to manufactured homes shall comply with all applicable provisions this Section in addition to the following:
- (1) Elevations.
    - (A) Within Zones A1-30, AO, AH, and AE of the 100-year Floodplain Safety Review Area, all manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot or more above the base flood elevation; or flood depth.
    - (B) Within Zone A, all manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to two feet or more above the highest adjacent grade; or
    - (C) Within the 100 to 500-year Floodplain Safety Review Area, all manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to ~~one foot~~ three feet or more above the highest adjacent grade.
  - (2) All manufactured homes shall be securely anchored to a permanent foundation system to resist flotation, collapse or lateral movement. Methods of anchoring shall include, but not be limited to, the use of over-the-top or frame ties to ground anchors.
  - (3) Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the Floodplain Administrator.
- (h) **Floodway standards.** FEMA-designated floodways are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, therefore, the following provisions apply:
- (1) Encroachments, including fill, new construction, substantial improvements, stockpiling, and other development are prohibited unless certification by a registered civil engineer or architect is provided, demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
  - (2) If Subsection 82.14.050(g)(1) above is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of this Chapter.
- (i) **Recreational Vehicles.** All recreational vehicles placed in the 100-year floodplain area will:

- (e) **Fencing.** A solid six-foot high fence of wood and/or masonry shall be installed along the property lines but shall not encroach into the front or street side setbacks. Additional fencing in compliance with Chapter 83.06 (Fences, Hedges, and Walls) may be installed.
- (f) **Landscaping.** Landscaping shall comply with the provisions of Chapter 83.10 (Landscaping Standards). In addition, the property owner shall maintain all landscaping in a sustained healthy condition.
- (g) **Lighting.** Lighting shall comply with the provisions of Chapter 83.07 (Glare and Outdoor Lighting).
- (h) **Parking.** Parking areas, parking stalls, and driveways shall comply with the provisions of Chapter 83.11 (Parking and Loading Standards). Storage of boats, campers, trailers and other recreational vehicles shall be prohibited on-site unless oversize parking areas are provided and designated. These areas shall be screened from adjacent streets and residences. Recreational vehicle parking may not be used to meet the standard parking requirements.
- (i) **Infrastructure requirements.** A Building Permit shall not be issued for the construction of multi-family residential dwelling(s) unless all of the following infrastructure requirements are satisfied for an existing lot of record:
- (1) Proof of legal and physical access.
  - (2) Infrastructure as determined by the Land Development Division of the Land Use Services Department depending on the location of the parcel to be developed. This may include, but not limited to, any of the following: paved access, curbs and gutters, sidewalk, streetlights, and/or appropriate drainage improvements. These requirements may be waived or modified on local streets if at least 70% of the parcels ~~fronting the same street, within 500 feet of the subject parcel~~ in the same block have been developed without full street improvements.
  - (3) Water.
    - (A) Water purveyor. Required when in the service area of a water purveyor and the purveyor can supply the water.
    - (B) Substantiated well water. If the subject parcel is not within the service area of a water purveyor, well water may be allowed if all required setbacks are met.
  - (4) Sanitation:
    - (A) Sewer. Required when in the service area of a sewer provider and the subject parcel is within 200 feet of the sewer line.

- (h) **Where manufactured homes allowed.** Manufactured homes installed or constructed in compliance with this Section shall be allowed in land use zoning districts where detached single-family residential structures are allowed.
- (i) **Certification tag or label required.** A permit from the Building and Safety Division for the installation of a manufactured home not within an approved and properly licensed mobile home park shall not be issued, if more than ten years have elapsed between the date of manufacture and the date of the application for the issuance of the permit to install such manufactured home except as provided below. Also, the manufacturer shall permanently affixed a label or tag to the manufactured home certifying that the manufactured home complies with federal construction and safety standards (43 U.S.C. section 5415) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401, et. seq.).

The ten-year standard provided above shall apply to all manufactured homes except when the following findings can be made:

- (1) The site for the proposed location of the manufactured home is adequate in terms of shape and size to accommodate the use and all parking areas, setbacks, structure coverage, yards, and other applicable requirements of this Development Code;
  - (2) An architect or engineer licensed by the State of California has determined and certified that the manufactured home proposed for installation substantially conforms to the construction standards regarding health, accessibility, life and fire safety and structural requirements applicable to manufactured homes less than ten years old; and
  - (3) The appearance of the manufactured home and the method of siting are compatible with the appearance of the primary structure and the structures in the surrounding neighborhood.
- (j) **Infrastructure requirements.** A building permit shall not be issued for the construction of single-family residential dwelling unless all of the following infrastructure requirements are satisfied for an existing lot of record:
- (1) Proof of legal and physical access.
    - (A) Physical access is a route which is traversable in a standard (two-wheel drive) sedan. Proof shall consist of an Engineer or Surveyor's signed and sealed letter, certifying that physical access has been completed.
    - (B) Legal access is:
      - (I) A dedicated right-of-way;

- (II) A dedication to the County of San Bernardino and to the public in general, an easement for public road, County highway and public utility purposes of a width as established by the Circulation Element of the General Plan. The easement or road constructed on the dedicated land shall not become a County highway until and unless the Board of Supervisors, by appropriate resolution, has caused the road to be accepted into the County maintained road system.
  - (III) An existing traveled way that is substantially in compliance with County road standards, where a prescriptive right by the user has been established for the public use by court decree.
  - (IV) Private road easement
- (C) When all feasible efforts to establish legal access in accordance with 84.21.030 (j) (1) (B) have been exhausted, the lot is an existing legally created parcel, and the property owner has physical access, the Director, in his/ her discretion, may waive the requirement for legal access on the condition that the property owner enters into an agreement in the form required by the County which includes the property owner's: (1) representation that the owner has a right to physical access; (2) acknowledgement that proof of legal access has not been provided to the County's satisfaction; and, (3) agreement to disclose to any subsequent owners that legal access has not been established to the satisfaction of the County. Notation of said agreement and conditions of waiver shall also be included on the building permit.
- (2) Infrastructure as determined by the Land Development Division of the Public Works Department depending on the location of the parcel to be developed. This may include, but not limited to, any of the following: paved access, curbs and gutters, sidewalk, and/or appropriate drainage improvements. These requirements may be waived or modified if a least 70% of the parcels in the same block have been developed without full street improvements.
  - (3) Water.
    - (A) Water purveyor. Required when in the service area of a water purveyor and the purveyor can supply the water.
    - (B) Substantiated well water. If the subject parcel is not within the service area of a water purveyor, well water may be allowed if all required setbacks are met.
    - (C) Hauled water. No hauled water will be allowed without approval from the Division of Environmental Health Services.
  - (4) Sanitation.

Adopted Ordinance 4309 (2016)

#### **84.34.030 Prohibition of Commercial Cannabis Activity.**

Except as expressly provided by Sections 84.34.040 and 83.34.050, in no event shall commercial cannabis activity be considered a permitted or conditionally permitted use in any land use zoning district. Commercial cannabis activity, including delivery, is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. It shall be unlawful for any person to conduct, cause to be conducted, or permit to be conducted, a commercial cannabis activity within the unincorporated area of the County. Any person violating any provision of this Chapter is guilty of a misdemeanor, punishable in accordance with the provisions of Chapter 86.09 (Enforcement and Chapter 2 of Division 1 of Title 1 of this Code. Notwithstanding the foregoing, a misdemeanor violation may be cited, charged, and prosecuted as an infraction. This section shall not affect the right to possess or use cannabis as authorized or prohibited by the laws of the State of California, or by any federal law.

Adopted Ordinance 4309 (2016), Amended Ordinance XXXX (2018)

#### **84.34.040 Exemption for Cultivation by Specified Persons.**

Notwithstanding Section 84.34.030, the prohibition concerning commercial cannabis activity does not apply to a person with an identification card cultivating cannabis for his or her personal medical use or to a primary caregiver cultivating cannabis for the personal medical use of no more than five (5) specified persons with identification cards, subject to the following requirements:

- (a) The cannabis is not sold, distributed, donated, or provided to any other person or entity.
- (b) A primary caregiver may only receive compensation in full compliance with Health and Safety Code section 11362.765, subdivision (c).
- (c) Cultivation may only be conducted indoors at the private residence of the person with an identification card or the primary caregiver of the person with an identification card.
- (d) Cultivation shall be limited to no more than:
  - (1) Twelve (12) cannabis plants per person with an identification card or primary caregiver per private residence; and,
  - (2) An aggregate total of twenty-four (24) cannabis plants per private residence when more than one person with an identification card or primary caregiver live at the private residence.
- (e) A private residence where cultivation occurs must be a fully enclosed structure, that includes solid walls, and a ceiling, roof or top. Cultivation of cannabis plants within the limitations described above, must be conducted in one designated cultivation area within the private residence. The designated cultivation area must be separately

- (1) Any activity involving the use of a chemical or other process to enhance tetrahydrocannabinol (THC) in cannabis; or
  - (2) The manufacture of cannabis.
- (n) Cultivation shall not occur upon any private residence containing a child day care, as defined by Section 810.01.060, subdivision (e).
- (o) A primary caregiver shall provide the identification card number of each of his or her patients to enforcement officers, upon request when acting in the course of their official duties while investigating compliance with the requirements of this Chapter.
- (p) If, after the adoption of this chapter, any federal or state law is passed which requires the County to allow the cultivation of cannabis by any persons not included within the exemption stated above, the exemption shall be expanded to include those persons specifically identified by said federal or state law, upon the date the law becomes effective. Any plant limitations imposed by said federal or state law, if in an amount less than specified in this section, shall apply to the additional exempted persons. All other provisions of this section shall apply to the additional exempted persons. It is the intent of this provision that the cultivation of cannabis within the unincorporated areas of the County is as restrictive as allowed under state law.

Adopted Ordinance 4309 (2016)

#### **84.34.050 Exemption for Licensed Health Care Facilities.**

- (a) Notwithstanding Section 84.34.030, the prohibition concerning commercial cannabis does not apply to a person designated as a primary caregiver by a qualified patient or person with an identification card, if such primary caregiver is the owner or operator of one of the following licensed facilities, or is one of no more than three employees who are designated by the owner or operator of one of the following licensed facilities:
- (1) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code;
  - (2) A health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code;
  - (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code;
  - (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code;

(5) A licensed hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(b) Before commencing a commercial cannabis activity, operators of those entities or facilities listed above, shall register with Land Use Services, and renew said registration on an annual basis. Upon said registration and each renewal thereof, the operator shall provide proof of a valid license as provided by Chapters 2, 3.01, 3.2, 8 and/or 8.5 of Division 2 of the Health and Safety Code.

(c) No facility or entity listed above shall conduct outdoor cultivation of cannabis.

Adopted Ordinance 4309 (2016), Amended Ordinance XXXX (2018)

**84.34.060 Landlords.**

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

Adopted Ordinance 4309 (2016)

**84.34.070 Application with other laws.**

Nothing in this ordinance shall be construed to allow the use of cannabis that is otherwise illegal under State or federal law. No provision of this chapter deemed a defense or immunity to any action brought against any person by the San Bernardino County District Attorney, the Attorney General of State of California, or the United States of America.

Adopted Ordinance 4309 (2016)

## CHAPTER 85.03 APPLICATION PROCEDURES

### Sections:

- 85.03.010 Purpose
- 85.03.020 Applications for Land Use Decisions
- 85.03.030 Development Review Committee
- 85.03.040 Environmental Review
- 85.03.050 Concurrent Applications
- 85.03.060 Application Forms and Information Packets
- 85.03.070 Pre-application Review
- 85.03.080 Notice of Pending Land Use Decisions
- 85.03.090 Conditions of Approval
- 85.03.100 Automatic Conditions
- 85.03.110 Post Decision Notice
- 85.03.120 Expiration of Inactive Permits

### 85.03.010 Purpose

This Chapter establishes the application requirements and noticing provisions necessary to process development proposals in any land use zoning district.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

### 85.03.020 Applications for Land Use Decisions

**(a) Application Submittal.** Applications for all land use decisions shall be made at the offices of the applicable review authority on forms supplied by the Department. Each application for a land use decision shall be accompanied by the information and materials deemed necessary to render the requested land use decision before the application is deemed complete and accepted for filing. Any application made under the provisions of this Development Code may be initiated by the Board or by any interested party unless otherwise indicated in this Development Code.

**(b) Submittal Shall Not Constitute a Waiver.** The submission of a complete application for land use approval and the participation in and cooperation with the applicable application review process shall not nullify, excuse, or exonerate any violation of the San Bernardino County Code existing on the property or arising from the use of the property for which such application was made. Further, the submission of a complete application for land use approval and the participation in and cooperation with the applicable application review process shall not toll or bar any enforcement action taken by or on behalf of the County to abate, remove, correct, or enjoin ~~correct or abate~~ any violation of the San Bernardino County Code existing on the property or arising from the use of the property for which such application was made, whether said enforcement



action is taken prior to, during, or after the application review process or prior to the granting of the appropriate land-use approval.

**(c) Application Submittal Subsequent to an Enforcement Action.** Notwithstanding the authority to abate, remove, correct, or enjoin any violation of the San Bernardino County Code that is the subject matter of an application and submitted subsequent to the initiation of any enforcement action, the County may enter into an agreement with an applicant agreeing to stay the commencement or prosecution of an enforcement action and allow an unpermitted use to temporarily continue, while a decision on an application and/or appropriate land-use approval is pending. Any agreement entered into under this subdivision shall require the approval of the Director. The Director may grant the approval of an agreement under this subdivision if the Director, in the exercise of his or her discretion, makes all of the following findings:

- (1) The nature, type, and extent of the violation is not adversely affecting the environment, public health, safety or welfare, or constitute a public nuisance for reasons independent of the applicant's failure to first obtain the appropriate permit, license, and/or approval.
- (2) The subject matter of the application is an allowed use within the land use zoning district and would not require an amendment to the General Plan.
- (3) The applicant has demonstrated a willingness and ability to obtain the appropriate permit, license, and/or approval in a timely manner.
- (4) Any structure and/or the use or occupancy of any structure that is the subject matter of the application meets all applicable Building Regulations as required by Title 6 of this Code, and has not been declared unsafe or unfit for occupancy.
- (5) There are no unpaid monetary fines, penalties, or liens issued or placed against the property, or any responsible party associated with the property, resulting from any past or current enforcement action by the County.

**(d) Agreement Staying Enforcement.** A decision on whether the County should enter into an agreement pursuant to subdivision (c) may require an investigation by appropriate County staff or agents working on behalf of the County to determine if an agreement is appropriate, and the County may establish and require payment of a fee for said investigation. Any decision made by the Director to approve or disapprove an agreement is final and a nonappealable administrative decision. All agreements approved by the Director shall be revocable in the event an applicant has failed to abide by the terms of the agreement, failed to obtain the appropriate land-use approval within 180 days after the final decision on the application, or to the extent the violation that is the subject of the enforcement action begins to adversely affect the environment, public health, safety or welfare, or constitute a public nuisance for reasons independent of the applicant's failure to first obtain the appropriate permit, license, and/or approval. The Director may grant an extension of time if a written request for extension is submitted at least 30 days prior to the expiration date and the applicant demonstrates that circumstances beyond the

control of the applicant prevent timely approval given the type of land-use approval required and the nature of the violation to be corrected.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009); Amended Ordinance 4085 (2009); Amended Ordinance (XXXX)

#### **85.03.030 Development Review Committee**

- (a) **Evaluation of proposals by the Development Review Committee (DRC).** Development review procedures include evaluation of proposals at a scheduled meeting of the DRC.
- (b) **Consideration of design and proposed conditions.** The DRC meeting allows informal discussions between the applicant, County staff, and others regarding the design and proposed conditions for a given proposal. The DRC provides a recommendation to the applicable review authority.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

#### **85.03.040 Environmental Review**

- (a) **Applications subject to CEQA.** All land use applications that are subject to the California Environmental Quality Act (CEQA) shall be reviewed by the Department in compliance with the County Environmental Review Guidelines.
- (b) **Environmental findings required.** Before taking an action to approve a land use application that is subject to CEQA, the Planning Agency shall make one or more environmental findings. The environmental finding(s) is required in addition to the findings specified in this Development Code for each application type.
- (c) **Greenhouse Gas (GHG) Emissions Review.** All land use applications that are subject to CEQA review shall have the potential impacts of the project's GHG emissions evaluated pursuant to the procedures entitled Review of GHG Emissions, Land Use Service Department Standard Policy/Procedures Manual, Section 9 (Environmental Review Guidelines).

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009); Amended Ordinance 4156 (2011)

#### **85.03.050 Concurrent Applications**

When more than one land use decision is required for a single project, all applications may be filed concurrently.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

### 85.03.090 Conditions of Approval

In approving an application for a land use decision, the review authority may establish reasonable conditions to its approval that are found to be necessary to protect the public health, safety, and general welfare that are consistent with the General Plan and this Development Code. In an application made subsequent to the initiation of any enforcement action by the County concerning the use of land, a structure, and/or the use or occupancy of a structure (as set forth in § 86.09.050) that is the subject matter of that enforcement action, the review authority may establish different time limits as a condition of approval in accordance with Subdivision 86.06.060(a). Conditions of approval may be changed through the Chapter 85.12 (Revisions to an Approved Action).

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009), Amended Ordinance XXXX (2018)

### 85.03.100 Automatic Conditions

Any development project defined in Government Code Sections 65927 and 65928, which is automatically approved in compliance with Government Code Section 65956, shall be approved subject to all of the following standard conditions:

- (a) **Allowed uses.** The development project shall be an allowed use in the applicable land use zoning district.
- (b) **Compliance with plans and Development Code required.** The development project shall be consistent with the General Plan, any applicable specific plan, and this Development Code.
- (c) **Compliance with public health, safety, and welfare requirements.** The development project shall comply with the public health, safety, and welfare requirements of other public agencies. These agencies include the County Department of Public Works, Fire Department, Special Districts Department and Divisions of Environmental Health Services and Building and Safety.
- (d) **Failure to comply.** Any automatic approval of a development project shall become null and void unless all conditions imposed by this Section have been fully complied with, and the occupancy, use of the land, and use of the proposed or existing structure(s) authorized by the automatic approval, has taken place within 36 months after the date of the automatic approval.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

### 85.03.110 Post-Decision Notice

- (a) **Provision of notice.** Within 10 days of a final decision on an application for a permit or other approval required by this Development Code, the County shall provide notice of its final action to the applicant and to any person(s) who specifically requested

notice of the County's final action and has provided a self addressed stamped envelope.

- (b) **Contents of notice.** The notice shall contain the final decision by the review authority.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

### **85.03.120 Expiration of Inactive Applications.**

- (a) An application shall expire and be considered abandoned 180 days after the last date that additional information, revisions, or funds (items) are requested, if the applicant has failed to provide the items requested, except as set forth below:
- (1) **Special Studies.** Whenever special studies (e.g., CEQA, etc.) are requested by the County that are reasonably expected to take longer than 180 days to complete, the application will not be considered inactive on the basis of the time required to complete such special studies. Staff will estimate a completion date and should these studies be delayed beyond the initial projected completion date, a new projected date of completion shall be established after which the application shall expire and be considered abandoned in 180 days if no action occurs on the project.
  - (2) The Director may grant one 90-day extension if the following criteria are met:
    - (A) A written request for extension is submitted at least 30 days prior to the expiration date;
    - (B) The applicant demonstrates that circumstances beyond the control of the applicant prevent timely submittal of the requested revisions or information; and
    - (C) The applicant provides a reasonable schedule for submittal of the requested revisions or information.
  - (3) At the sole discretion of the Director, the Department may extend any expiration date, as set forth in this Subsection (a), of an application without a written request from an applicant when additional time for County processing or scheduling of appointments is required; when the Department needs information or responses from other agencies; or under other similar circumstances as determined by the Director or authorized designee thereof.
- (b) Notwithstanding Subsection (a), an application made subsequent to the initiation of any enforcement action by the County concerning the use of land, a structure, and/or the use or occupancy of a structure (as set forth in Section 86.09.050) that is the subject matter of that enforcement action, shall be deemed ~~expir~~**abandon**ed if the Director determines, in the exercise of his or her discretion, that the applicant has failed to substantially comply with the application process in

(c) a timely manner, given the type of land-use approval required and the nature of the violation(s) to be corrected. The submission of requested items in a piecemeal fashion resulting in unnecessary delays shall constitute prima facie evidence of the applicant's failure to substantially comply with the application process in a timely manner. The Department shall provide written notice to the applicant of any determination of expiration under this subdivision. Following the abandonment of an application pursuant to this subdivision, the County may continue with the enforcement action unless the subject matter of that enforcement action has already been abated, removed, corrected, or enjoined pursuant to Section 85.03.020 ~~and~~ Chapter 86.09., or any other provision of this Code.

Adopted Ordinance 4244 (2014), Amended Ordinance XXXX (2018)