



Legislation Details (With Board Report)

File #: ORD 22-035 **Name:**

Type: Ordinance **Status:** Passed

File created: 8/9/2022 **In control:** Board of Supervisors

On agenda: 8/30/2022 **Final action:** 8/30/2022

Title:

- a. Discuss and provide direction regarding proposed amendments to Monterey County Code Titles 20.69 and 21.69 extending the sunset date of the Outdoor Commercial Cannabis Cultivation Pilot Program and removing the requirement that an applicant provide proof of cannabis cultivation on the site prior to January 1, 2016; and
- b. Receive an update on operating costs and estimated tax revenues resulting from proposed amendments to the Outdoor Commercial Cannabis Cultivation Pilot Program; and
- c. Provide further direction as appropriate.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. A. Monterey County Code Titles 20.69 and 21.69, 3. Presentation Item No.pdf, 4. Completed Board Order Item No. 12

Date	Ver.	Action By	Action	Result
8/30/2022	1	Board of Supervisors	approved as amended	

a. Discuss and provide direction regarding proposed amendments to Monterey County Code Titles 20.69 and 21.69 extending the sunset date of the Outdoor Commercial Cannabis Cultivation Pilot Program and removing the requirement that an applicant provide proof of cannabis cultivation on the site prior to January 1, 2016; and

b. Receive an update on operating costs and estimated tax revenues resulting from proposed amendments to the Outdoor Commercial Cannabis Cultivation Pilot Program; and

c. Provide further direction as appropriate.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

- a. Discuss and provide direction regarding proposed amendments to Monterey County Code Titles 20.69 and 21.69 extending the sunset date of the Outdoor Commercial Cannabis Cultivation Pilot Program and removing the requirement that an applicant provide proof of cannabis cultivation on the site prior to January 1, 2016; and
- b. Receive an update on incremental costs and estimated tax revenues resulting from proposed amendments to the Outdoor Commercial Cannabis Cultivation Pilot Program; and
- c. Provide further direction as appropriate.

SUMMARY:

In June 2019, the Board of Supervisors (Board) adopted an Ordinance that added Chapters 20.69 and 21.69 to the Monterey County Code (MCC) and established a five-year Outdoor Commercial Cannabis Cultivation Pilot Program (Pilot Program). In May 2021, in response to the challenges outdoor cultivators were facing in applying for the required land use permits, the Board amended Chapters 20.69 and 21.69 of MCC to: 1) extend the Pilot Program an additional three years; 2) add Permanent Grazing as an allowable zoning type within the Cachagua Area Plan; 3) increase the canopy limit from 10,000 to 20,000 square feet; and 4) reduce setbacks from the nearest offsite structure from 500 feet to 250 feet, with the ability for the review authority to grant

exceptions to these setbacks upon making certain findings.

The Pilot Program will sunset in 2026 for inland areas. Within the coastal zone, the Amended Ordinance has not been certified by the Coastal Commission. Absent Coastal Commission action, the original Ordinance will sunset in October 2024. The Housing and Community Development Department has only received one eligible land use application to date for the inland area. This application is currently in an incomplete status.

At the May 5, 2022 Cannabis Committee (Committee) meeting, staff presented a report recommending amendments to extend the Pilot Program term and to remove the requirement that the applicant provide proof of cannabis cultivation on the site prior to January 1, 2016. Following discussion, staff was directed to return with additional information. On July 5, 2022, staff presented additional information to the Committee and was directed to present the item to the full Board, including anticipated costs and cannabis business tax revenue.

DISCUSSION:

Possible Amendments to the Pilot Program.

To maintain the Board's support for the Pilot Program and potentially increase tax revenue, the Board should first provide direction regarding whether to extend the sunset dates or entirely remove the sunset clause since it appears to be a hinderance to entry into the program. Operators appear to be unwilling to invest in an operation for a limited term. Extending the term would allow the operators to recoup costs over a long period.

If there is support for extending the Pilot Program, the Board should further consider removing the requirement that an applicant provide proof of cannabis cultivation on the site prior to January 1, 2016. MCC sections 20.69.050 and 21.69.050 (Attachment A) currently state:

“B. Qualified properties are required to provide evidence to the satisfaction of the Appropriate Authority that all of the following criteria are met:

3. The cannabis site is located on a lot where proof of prior cultivation is demonstrated per Subsection C of this Section.

C. Qualified properties are required to provide evidence to the satisfaction of the appropriate authority that they were engaged in medicinal cannabis cultivation on the lot prior to January 1, 2016. For the purposes of this Subsection, cultivation of six or fewer plants shall not be sufficient evidence of prior cultivation. Such evidence shall include at least two of the following:

1. Photographs of cultivation that existed on the lot prior to January 1, 2016, including aerial views from Google Earth, Big Maps, Terraserver, or a comparable service showing both the entire lot and the cultivation site in more detail. The date these images were captured shall be noted.

2. Documentary evidence that medicinal cannabis was cultivated on the lot on behalf of a collective or cooperative dated prior to January 1, 2016.

3. Any other form of evidence acceptable to the appropriate authority that cultivation occurred on the lot prior to January 1, 2016.”

These requirements do not account for the common case when a heritage cannabis grower no longer owns or is a lessee of the property that was previously cultivated.

In late 2021, the Program applied for two grants: the Cannabis Equity Grants Program for Local Jurisdictions offered by the Governor's Office of Business and Economic Development (GO-Biz) and the Local Jurisdiction Assistance Grant (LJAG) offered by the Department of Cannabis Control (DCC). Funding from each of these grants is intended to be used to identify processes to better assist the industry within Monterey County and reduce barriers to entry.

In December 2021, the Board adopted the Growing Equity Together (GET) Program, which included a Retirement, Remediation, and Relocation (RRR) component for qualified equity applicants. The Program is ready to proceed with the work tasks associated with such a program, including the necessary environmental review. The purpose of RRR is to incentivize the transfer of development rights from one area to another. This modified version of RRR would allow applicants who previously cultivated under Prop 215 to transfer development rights to a new property. As approved by the Board, the Program was directed to work with Housing and Community Development to develop the RRR program, proceed with the required environmental review, and amend applicable ordinances to codify the RRR program. The related costs to develop the RRR program are included in the Local Jurisdiction Assistance Grant award.

In lieu of implementing a RRR component within the GET Program, the Board should consider whether removing the requirements to provide proof of prior cultivation, as required per sections 20.69.050 and 21.69.050, is appropriate given the following:

- a. Many interested applicants who previously cultivated under the Compassionate Use Act (Prop 215) no longer own/lease the original property, which would make them ineligible for the Pilot Program.
- b. The Housing and Community Development (HCD) Department has received just one eligible discretionary land use permit application related to commercial cannabis outdoor cultivation.
- c. The implementation of a local RRR component would require environmental review (CEQA determination) and additional amendments to the current ordinance.
- d. The time and resources required for a RRR component would be better deployed in other areas to assist the industry with obtaining local compliance.

Despite being in place for nearly three years, the Pilot Program has not resulted in any active operations. Without insight into how viable outdoor cultivation is locally, the Board lacks sufficient information to decide whether to extend or repeal the Pilot Program. Staff believes that these proposed changes may result in additional applications being submitted and approved, which would provide the Board with outcomes upon which to base further policy decisions pertaining to the Pilot Program.

To preserve the intent of the Pilot Program, staff recommends the Board consider direction to:

- Remove the requirement that heritage growers can only operate on the “lot Prior to January 1, 2016,” since most heritage growers either no longer own the property or have lost their lease to that specific property.
- Amend the Ordinance to allow heritage growers to cultivate on lands not previously cultivated, provided the aggregate commercial cannabis canopy is limited to 300,000 square feet. This amount is based on 15 operators with a maximum canopy of 20,000 square feet each, which is the number of legacy growers that the Program understands previously existed in the applicable areas.

Should staff receive this aforementioned direction from the Board, HCD would ask the Planning Commission to consider and make a recommendation on the matter prior to the Board’s formal consideration.

Costs to Operate the Pilot Program.

The Committee requested that staff provide the Board with financial impacts of operating the Pilot Program.

Program staff have determined that no additional staff or non-staff allocations are needed, as the Program can schedule inspections with the current allocations: three HCD Code Compliance Inspectors and three Environmental Health Specialists positions. The Program will absorb any additional cannabis business permit work and other related items into its current workload.

The proposed changes would have negative funding implications for HCD. While the LJAG allocation would fund the environmental impact report, there is no additional funding to offset the staff time required to draft ordinance amendments and process additional Pilot Program applications; planning permit application fees would not fully cover costs.

Commercial Cannabis Business Tax - Outdoor Cultivation.

To date, no tax revenue has been received related to the Pilot Program. The current commercial cannabis business tax rate for outdoor cultivation is \$1.00 per square foot. If the recommendations were approved and if there were 15 legal outdoor cannabis operators each cultivating at maximum canopy limit of 20,000 square feet, the tax revenue could be approximately \$300,000 annually. These estimates are based upon support of staff's recommendation to remove the requirement for proof of prior cultivation, as this would expand the pool of eligible applicants. Furthermore, extending the Pilot Program could generate tax revenue across additional fiscal years to offset operating costs.

The Program and HCD are committed to working with interested heritage growers to sustain an outdoor cannabis pilot program. These revisions could be incorporated into work that is already occurring. HCD is currently reviewing proposals to prepare a programmatic environmental impact report related to the existing Pilot Program that would streamline the project-level reviews and plans to seek Board authorization on the associated contract soon. These amendments could be included in this work. The selection of environmental firm and the associated work, including presentations to the Planning Commission, Board of Supervisors, and certification by the Coastal Commission, would be completed by mid-2023.

If the Board approves these actions, the RRR program and associated environmental review would not need to be completed. Staff would request that the Department of Cannabis Control amend the grant to authorize use of the funds for the study for other purposes, such as additional pass-through dollars for industry operators.

FINANCING:

Monterey County's Cannabis Program is funded in County Administrative Office - Department 1050, Intergovernmental and Legislative Affairs Division - Unit 8533, Cannabis. The proposed recommendations will not incur additional expenses to the Program, but may incur additional expenses related to HCD and County Counsel staff time required to prepare reports, ordinances, and presentations.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

- X Economic Development
- X Administration
- X Health & Human Services
- X Infrastructure
- X Public Safety

Prepared by: Joann Iwamoto, Program Manager II

Approved by: Erik Lundquist, Housing and Community Development Director

Attachments:

- A. Monterey County Code Titles 20.69 and 21.69

