



Monterey County

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Board Report

Legistar File Number: ORD 15-011

Scheduled p.m.
July 28, 2015

Introduced: 7/21/2015

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

Public Hearing to:

- a. Adopt a resolution issuing a report describing the measures taken to alleviate the condition which led to the adoption of Interim Ordinance No. 5254 relating to medical marijuana; and
- b. Adopt an ordinance to extend Interim Urgency Ordinance No. 5254 for 10 months and 15 days, until and through July 5, 2016, as an urgency measure pursuant to Government Code Section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of the County, pending the County's study and consideration of regulations. (4/5 vote required)

(Medical Marijuana Interim Urgency Ordinance - REF150047; Statutorily exempt under CEQA)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a resolution (Attachment A) issuing a report describing the measures taken to alleviate the condition which led to the adoption of Interim Ordinance No. 5254 relating to medical marijuana; and
- b. Adopt an ordinance (Attachment B) to extend Interim Urgency Ordinance No. 5254 for 10 months and 15 days, until and through July 5, 2016 as an urgency measure pursuant to Government Code Section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of the County, pending the County's study and consideration of regulations. (4/5 vote required)

SUMMARY:

On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 establishing a 45-day ban on the collective and cooperative cultivation of marijuana and medical marijuana dispensaries in the unincorporated areas to protect the public health, safety and welfare while the County studies and develops appropriate land use regulations to address the public health, safety, environmental, law enforcement, and other impacts from these uses. Under the ordinance, the use of real property for the collective or cooperative cultivation of marijuana for medical purposes or for medical marijuana dispensaries is prohibited with few exceptions. (See Sections 4 and 5 of the Interim ordinance.)

Pursuant to Government Code Section 65858 the initial interim ordinance expires on August 21, 2015 (45 days from its adoption) unless it is extended following a noticed Public Hearing. Because August 21, 2015 falls during the Board's summer recess, staff has brought the

ordinance extension back for consideration at the July 28, 2015 Board meeting to consider the first extension of the ordinance for an additional 10 months, 15 days. Pursuant to that same section of the Government Code, the County is required to issue a report 10 days prior to the expiration of the interim ordinance or any extension, describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

At the July 7, 2015 hearing, the Board of Supervisors discussed potential options for alternative exemptions from the interim ordinance and directed staff to report back on the options as part of the extension hearing. Exemptions, and the potential implications of those exemptions, are discussed in more detail below.

DISCUSSION:

Report on Measures Taken

A resolution has been prepared for the Board's adoption describing the measures taken to alleviate the condition which led to the adoption of the interim ordinance. The measures include the following:

1. Staff has been gathering and reviewing regulations from other jurisdictions within California to inform the creation of regulations for Monterey County.
2. Staff including the Resource Management Agency (RMA), the County Administrative Office, the Treasurer Tax-Collector, the District Attorney's office, the Sheriff's Office, the Office of County Counsel, the Chief Administrative Budget office, the Agricultural Commissioner, and Health Services met internally on July 22, 2015 to begin to discuss development of local land use regulations relative to cultivating, processing and dispensing of medical marijuana.
3. Staff has mapped out a tentative schedule for the drafting and processing of regulations, which includes internal discussion and development over the next few weeks, stakeholder meetings in late August, a workshop at the Planning Commission targeted for September 30, preparing a draft of the regulations and conducting appropriate environmental review in the fall, Planning Commission hearings likely in December, and Board of Supervisors' consideration likely in January 2016. If the coastal regulations require certification by the Coastal Commission, several more months would be required before the Board could adopt final regulations applicable in the coastal zone.

Length of the Extension of the Interim Ordinance

An extension of the 45 day interim ordinance prohibiting the collective and cooperative cultivation of marijuana and medical marijuana dispensaries is needed. Staff is working on developing permanent land use regulations regarding medical marijuana; the process for consideration includes conceptualizing and drafting the regulations, environmental review, and public hearings at the Planning Commission and Board of Supervisors. This process could take several months, and could be longer for the coastal regulations if they need certification by the Coastal Commission. Accordingly, staff is recommending that the Board extend the interim ordinance for the full 10 months and 15 days in order to provide time for the development of permanent regulations. If permanent regulations are adopted prior to July 5, 2016, the new rules would take effect and the Board could terminate the interim ordinance.

Exemptions from the Interim Ordinance

The interim ordinance adopted by the Board of Supervisors on July 7, 2015 (Interim Ordinance No. 5254) temporarily (45 days) prohibits the establishment of new medical marijuana dispensaries and the collective or cooperative cultivation of medical marijuana in the unincorporated areas of the County. The adopted interim ordinance contained the following three exemptions:

1. The cultivation of a limited number of marijuana plants for personal use by a qualified patient, a patient with an identification card, or primary caregiver within the limits set forth in Health and Safety Code sections 11362.77;
2. Cultivation that had commenced prior to the adoption of the interim ordinance and for which all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of the Interim Ordinance (July 7); and
3. Dispensaries that had commenced prior to the adoption of the interim ordinance and for which all required County approvals and land use permits had been obtained prior to the date of adoption of the Interim Ordinance (July 7).

Being “exempt” from the Interim Ordinance means that the Interim Ordinance does not apply. However, such uses are still subject to any other County regulation that may apply as well as state and federal law.

At the hearing on July 7, 2015, based on a request by a member of the public to exempt cultivation that was “under development” as of July 7, staff presented options to the Board for expanding the exemptions to include either or both of the following exemptions:

1. Permits to cure a code violation: Allowing property owners who had commenced cultivation but not obtained required County land use permits to apply for and allow the County to process the appropriate land use permits during the time that the interim ordinance is in effect; and
2. “Substantial progress”: Allowing collectives or cooperatives who had not commenced cultivation prior to July 7 but who have invested substantial resources in preparation for cultivation prior to adoption of the interim ordinance -- evidenced for example by contractual obligations for a cultivation site and substantial financial investment --to request that the Director of Planning allow them to proceed with permitting and preparation for cultivation.

The Board has discretion to determine whether or not to expand the exemptions. Members of the public have requested exemption from the ordinance based on investment of resources based on today’s land use regulations; those attempting to operate within the rules and seek permission may be disproportionately impacted. On the other hand, the interim ordinance enables the County to develop regulations before additional uses commence. The more expansive the exemptions, the less effective the temporary prohibition will be. The existing exemptions in the Interim Ordinance are fair, in that they allow uses that already existed and are compliant with law to continue while the County develops regulations, and the exemptions also do not prohibit a qualified patient from cultivating a small number of plants for his/her own medical use.

Given the need to develop land use regulations which specifically address the unique public health, safety, environmental, and law enforcement impacts of marijuana cultivation and dispensaries, staff recommends against expanding the exemptions and in favor of approving an extension to the interim ordinance as it was initially adopted, for 10 months and 15 days while staff develops for the Board's consideration appropriate long-term land use regulations for these uses and activities. Adoption of the ordinance attached to the staff report (Attachment B) extends the existing Interim Ordinance until July 5, 2016.

The interim ordinance is statutorily exempt under the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

OTHER AGENCY INVOLVEMENT:

The Ordinance has been drafted by the Office of County Counsel with input from the RMA and approved as to form by County Counsel.

FINANCING:

Funding for staff time associated with this project is included in the respective Departments FY2015-16 Adopted Budgets.

Prepared by: Wendy Strimling, Senior Deputy County Counsel, ext. 5430 *WS*
Kelly Donlon, Deputy County Counsel, ext. 5313 *KLD*
Craig Spencer, Associate Planner, ext. 5233 *CS*

Approved by: Mike Novo, Director, RMA-Planning *MN*
Carl P. Holm, AICP, Acting Resource Management Agency Director *CPH*

cc: Front Counter Copy; California Coastal Commission (if applicable); The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; Aaron Johnson; Michael Bitar; Todd Bessire; CAO, Lucila Sanchez; Agricultural Commission, Eric Lauritzen; Sherriff's Office, Steve Bernal; District Attorney, Dean Flippo; Health Department, Dr. Moreno; Tax Collector, Mari Beraz; Building Official, Dan Dobrilovic; Project File REF150047

The following attachments are on file with the Clerk of the Board:
Attachment A - Resolution Issuing Report of Measures Taken
Attachment B - Draft Ordinance extending Ordinance No. 5254
Exhibit 1 to Attachment B: Ordinance No. 5254