



Monterey County

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Board Report

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Receive a report on the status of the development of medical marijuana regulations for the unincorporated area of Monterey County
(Medical Marijuana Ordinance - REF150048)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Receive a report on the status of the development of medical marijuana regulations for the unincorporated area of Monterey County.

SUMMARY:

A Board of Supervisors' ad hoc committee has been diligently working with staff over the past six months on developing regulations for how the County of Monterey addresses medical marijuana businesses in the unincorporated areas. This ad hoc committee was formed in response to a referral from Supervisor Phillips in June of 2015. The following is a brief summary of major milestones that have occurred since that time:

- On July 7, 2015, the Board adopted Interim Urgency Ordinance No. 5254 to temporarily prohibit new collective or cooperative medical marijuana cultivation and dispensaries in Monterey County.
- On July 28, 2015, the Board extended the Interim Urgency Ordinance for 10 months and 15 days until and through July 5, 2016 (Interim Ordinance No. 5256).
- Since July 2015, RMA staff has worked with staff from multiple County agencies and an ad hoc committee of the Board of Supervisors to draft medical marijuana regulations (See Attachments A, B and C). Draft regulations will be considered at stakeholder meetings in the month of February.
- In October 2015, the State passed the Medical Marijuana Regulation and Safety Act (AB266, AB243, SB643). This bill included a deadline of March 1, 2016 to enact regulations permitting or prohibiting marijuana cultivation or the State would become the sole licensing authority for cultivation in that jurisdiction. Monterey County's interim ordinance (5254/5246), prohibiting new cultivation activities, meets this condition. The new legislation includes direction for developing State regulations; however, the State has indicated those regulations would not be in place until 2018.
- Cities of Del Rey Oaks, Salinas, King City, and Greenfield have adopted ordinances allowing certain types of business.
- Cities of Monterey, Seaside, Pacific Grove, Carmel, and Marina have adopted ordinances banning cannabis operations. Some of the Cities have adopted interim ordinances and are considering options for long-term regulations similar to the County.

- The Legislature has passed new legislation (AB21) that would remove March 1 deadline for local agencies to adopt regulations and the language that made the state the “sole licensing authority,” and includes language recognizing the County’s authority to adopt regulations under its constitutional police power. The legislation is awaiting the Governor’s signature.
- RMA staff will meet with stakeholders, refine the draft ordinances, conduct environmental review, and analyze staffing and budget impacts.
- Board hearings are targeted for June 2016 on the permanent regulations, subject to completion of environmental review.

DISCUSSION:

Interim Urgency Ordinance

The Board of Supervisors adopted Interim Urgency Ordinance No. 5254, as extended by Ordinance No. 5256, which is effective through July 5, 2016. Government Code Section 65858(a) permits the Board, following notice of public hearing and upon a four-fifths vote, to extend Interim Ordinance No. 5254 for one additional year, provided that the Board finds that there is a current and immediate threat to the public health, safety, or welfare. As such, with the appropriate process and findings, the Board could extend the interim ordinance until and through July 5, 2017, if needed. Pursuant to Interim Ordinance No. 5254, no new cannabis businesses are allowed until permanent regulations are adopted. Staff is working toward having a permanent ordinance adopted before the July 5, 2016 sunset date of the interim ordinance. However, coastal regulations are likely to take longer than one year to go into effect because such regulations would require certification by the Coastal Commission, and that process can take up to a year. Therefore, staff anticipates presenting the Board with the option to extend the interim ordinance for up to one additional year to accommodate coastal ordinance certification timelines. It will also re-open a discussion if any other exception(s) should be applied.

State Law

In October 2015, Governor Brown signed into law Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 (collectively the “Medical Marijuana Regulation and Safety Act”). This new law establishes a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, requires state licensing for “commercial cannabis activities,” and directs certain state agencies to develop specific rules and regulations for the implementation of the law. According to current projections, implementation of the regulations are not anticipated until 2018. The law provides flexibility for local governments to adopt bans or to adopt their own regulations that are “at least as stringent” as state law. The current draft ordinances have been modeled after the framework provided in the new state law; however, specific regulations, to be developed at the state level, are unknown and are being addressed locally in the interim.

Importantly, the state will not issue its licenses for medical cannabis operations without permission from the applicable local government. The one exception to this is for the cultivation of marijuana. Assembly Bill 243 contains a provision that makes the state the sole licensing authority for medical marijuana cultivation. If a local government does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana by March 1, 2016, then the state will be the sole licensing authority. As discussed above, the County currently has regulations prohibiting cultivation by Interim Ordinance No. 5254. County staff

sent a letter to the State explaining this temporary prohibition (Attachment D). That provision of state law, however, is the subject of urgency legislation (Assembly Bill 21) that would delete the March 1 deadline and the language that made the state the “sole licensing authority,” and includes language recognizing the County’s authority to adopt regulations under its constitutional police power. As of the writing of this report, Assembly Bill 21 has been passed by the Legislature and is currently before Governor Brown for his signature or veto.

Draft Ordinances

With the passage of the Medical Marijuana Regulation and Safety Act, many jurisdictions around the state are currently working to develop new medical marijuana regulations. Creation of a new County regulatory structure for this industry has been a larger task than originally anticipated. With collaboration from the Sheriff’s Office, the District Attorney’s Office, the Treasurer-Tax Collector’s Office, the Assessor’s Office, the Health Department, the Agricultural Commissioner, the CAO’s Office, County Counsel’s Office, Economic Development, and the Resource Management Agency, and with direction and input from the Board’s ad hoc committee, staff has drafted regulations that attempt to address a variety of issues and concerns surrounding this industry. The draft regulatory concept currently includes three local ordinances, which include:

1. Draft ordinances amending zoning regulations (Title 20-Coastal and Title 21-Inland) to establish medical cannabis uses allowed in specified zoning districts with approval of a Use Permit in each case. These ordinances focus on land use and environmental issues.
2. A draft ordinance that requires an annual business permit to operate any type of commercial medical cannabis business. The business permit requirements focus on operational regulations and include inspection requirements specific to the needs of the Health Department and the Sheriff’s Office; and
3. A draft ordinance establishing a new business license requirement for commercial cannabis businesses that operate in the unincorporated areas of the County. A business license would only be required for commercial cannabis businesses. The business license requirements could be extended to other types of businesses in the future, if desired. The business license would be a final step in the permitting processes that ensures that all required permits, licenses, and entitlements have been obtained, and it would create a register of businesses permitted to operate in Monterey County.

The draft ordinances are still being refined in coordination with the ad hoc committee and may undergo subsequent revisions as a result of the upcoming stakeholder process, further County Counsel review, environmental review and public hearings. The draft regulatory structure has raised several important questions about staffing levels and funding sources for new staff. Staff is in the process of gathering information on suggested staffing levels to accommodate these new duties and potential funding sources for the added costs.

Next Steps

Staff is in the process of preparing for public outreach to provide the opportunity for public comment on the ordinances. Staff is planning a workshop at the Planning Commission to familiarize the Commission with the ordinances, allow the public to provide comments, and to provide a public forum meeting for the greater Salinas area. After further refinement of the ordinances resulting from the outreach process, environmental review pursuant to the California

Environmental Quality Act (CEQA) will be conducted. Attached is an estimate of the timeline for processing the ordinances (Attachment E). Staff will continue to make these regulations a priority and welcomes any feedback on the draft ordinances.

OTHER AGENCY INVOLVEMENT:

In addition to consultation with the ad hoc committee of the Board, the following agencies have been participating in preparation of ordinances:

- Environmental Health Bureau
- Sheriff's Office
- District Attorney's Office
- Treasurer/Tax-Collector's Office
- Assessor's Office
- Health Department
- Agricultural Commissioner's Office
- CAO's Office
- County Counsel
- Economic Development

FINANCING:

Funding for staff time associated with drafting these regulations, including providing this status report, is included in each Departments' FY15-16 Adopted Budget. Implementation of new regulations is anticipated to impact services, which staff believes will necessitate additional staff. A total needs assessment is dependent on final regulations that are adopted. Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

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This report was reviewed by Jacqueline R. Onciano, RMA Services Manager

All attachments are on file with the Clerk of the Board:

- Attachment A Draft zoning ordinance (inland)
- Attachment B Draft business permit ordinance
- Attachment C Draft business license ordinance
- Attachment D Letter from the County to the State concerning the moratorium
- Attachment E Anticipated timeline

cc: Front Counter Copy; California Coastal Commission (if applicable); Jacqueline Onciano, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; Jeff Atkinson; Aaron Johnson; Michael Groves; Todd Bessier; Michael Bitar; Sal Palma; Mike Linder; Jason Kallen; aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valedz; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Project File REF150048

