

**ORDINANCE NO. 5351
(CORRECTED)**

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTERS 20.67 AND 20.69 OF TITLE 20 (COASTAL ZONING) OF
THE MONTEREY COUNTY CODE TO MODIFY RENEWABLE ENERGY
REQUIREMENTS FOR INDOOR CULTIVATION AND EXPAND THE OUTDOOR
CANNABIS CULTIVATION PILOT PROGRAM**

County Counsel Summary

This ordinance amends Chapter 20.67 of Title 20 (coastal zoning) of the Monterey County Code to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. This ordinance repeals the requirement for onsite renewable energy generation offsetting at least 50% of the projected energy demand. This ordinance also amends Chapter 20.69 of Title 20 (coastal zoning) of the Monterey County Code to extend the pilot program duration from 5 years to 8 years, reduce the setback required between a cannabis cultivation site and the nearest offsite structure from 500 feet to 250 feet, and increase the maximum allowable canopy for outdoor cultivation from 10,000 square feet to 20,000 square feet.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. The Controlled Substances Act (21 U.S.C. § 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

C. The federal government issued guidelines for states and local governments that have enacted laws authorizing commercial cannabis that highlight the importance of implementing strong and effective regulatory and enforcement systems that will address the threat that cannabis activity could pose to public safety, public health, and other law enforcement interests.

D. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, "CUA"), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for

the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.

E. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

F. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code § 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.

G. On July 12, 2016, the Monterey County Board of Supervisors (“Board of Supervisors”) adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance No. 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code (“MCC”)), and on July 19, 2016 the Board of Supervisors adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance No. 5272, codified at MCC Chapter 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to Section 15372 of the California Elections Code. On November 8, 2016, the voters approved the tax (Measure Y, codified at MCC Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code and Ordinance Nos. 5270 and 5272 became operative. Hence, Chapter 21.67 became operative in the inland unincorporated area on December 13, 2016. Chapter 21.67 only allowed for medical commercial cannabis activities within greenhouses and indoor facilities legally established as of January 1, 2016.

H. Also on July 12, 2016, the Board of Supervisors adopted a resolution of intent (Resolution No. 16-210) to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. The County submitted the regulations to the California Coastal Commission for certification, but the County subsequently withdrew the proposed regulations because of discussions with Coastal Commission staff on revisions and changes to state law.

I. On November 8, 2016, by statewide initiative, the voters enacted the Adult Use of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.

J. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code § 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single state licensing scheme for both medicinal and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities.

K. On December 5, 2017, the Board of Supervisors adopted Ordinance No. 5292 to amend Title 21 of the MCC to regulate both adult-use and medical commercial cannabis activities, and Resolution of Intent No. 17-015 to adopt an ordinance amending the Monterey County Coastal Implementation Plan (Title 20) of the MCC to regulate commercial cannabis activities in the coastal zone. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1. On March 20, 2018, the Board of Supervisors adopted the coastal zoning regulations, as certified by the Coastal Commission (Ordinance No. 5299). Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

L. On November 6, 2018, the Board of Supervisors adopted Ordinance No. 5306 to amend Title 21 of the MCC to change commercial cannabis activities from a conditional use allowed subject to a Use Permit, to a principle use allowed subject to an Administrative Permit. On that same day, the Board of Supervisors adopted Resolution of Intent No. 18-413 to amend the Monterey County Coastal Implementation Plan (Title 20) to change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit, to a principle use allowed subject to a Coastal Administrative Permit. The Resolution of Intent (No. 18-413) was certified by the Coastal Commission on September 27, 2019. The ordinance must return to the Board of Supervisors for adoption.

M. On June 18, 2019, the Board of Supervisors adopted Ordinance Nos. 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code to establish a five year pilot program for outdoor commercial cultivation and related activities in certain coastal and inland unincorporated areas. Ordinance No. 5312 was certified by the Coastal Commission on September 27, 2019.

N. The purpose of this ordinance is to make two amendments. First, to modify the regulations for indoor cultivation to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. Second, to modify the regulations for outdoor cannabis cultivation in the coastal unincorporated areas of Monterey County to remove some constraints to entry in the program. The Board of Supervisors is acting on a separate similar ordinance applicable to the inland unincorporated area.

O. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice, and that comply with state law and federal guidelines.

P. In addition to this ordinance, commercial cannabis activities are subject to Chapters 7.02 and 7.90 of the MCC, which require a Business License and a Commercial Cannabis Business Permit respectively. Together these regulations establish an effective regulatory and enforcement system.

Q. This ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Business and Professions Code section 26055(h), which provides a

statutory exemption from CEQA where, prior to July 1, 2021, the local agency adopts an ordinance that requires discretionary review of permits, including applicable environmental review under CEQA, to engage in commercial cannabis activity.

R. The County intends to carry out the amendments in a manner fully in conformity with the Coastal Act and MAUCRSA.

S. This ordinance amends the Monterey County Coastal Implementation Plan, which is part of the County's Local Coastal Program. Pursuant to the Coastal Act, the County may amend the certified Local Coastal Program provided the County follows certain procedures. The procedures include the following: the County's Planning Commission holds a noticed public hearing and makes a recommendation to the Board of Supervisors on the proposed amendment; the Board of Supervisors holds a noticed public hearing to adopt the ordinance subject to California Coastal Commission certification, and submits the proposed amendment to the Coastal Commission for certification together with materials sufficient for a thorough and complete review; and the Coastal Commission certifies the amendment and confirms the County's action. Accordingly, the ordinance will not go into effect until after the Coastal Commission certifies the amendment and confirms the Board's action.

SECTION 2. Subsection B.9 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

9. Electrical power for indoor cultivation using artificial lighting only shall be provided by one of the following methods:

a. Onsite renewable generation designed to offset anticipated energy demand to the maximum extent feasible and purchase of carbon offsets of any portion of power not provided from onsite renewable sources; or

b. Ongoing participation in a rate program offered by the electric utility provider that provides energy from one hundred percent (100%) renewable source. Examples of such programs include the Central Coast Community Energy 3CPrime program, and Pacific Gas and Electric Company's Solar Choice or Regional Renewable Choice programs.

SECTION 3. Subsection B of Section 20.69.030 of the Monterey County Code is amended to read as follows:

B. The duration of the pilot program shall be June 18, 2026, eight (8) years from the effective date of the ordinance enacting this Chapter.

SECTION 4. Subsection C of Section 20.69.060 of the Monterey County Code is amended to read as follows:

C. Outdoor cultivation and outdoor cultivation ancillary uses shall conform to all of the following minimum setback requirements:

1. The lot on which a cannabis site is located shall not be within one thousand (1,000) feet of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, a playground, or a drug recovery facility that is in existence at the time of approval of a permit by the appropriate authority. The distance specified in this Section shall be measured in a straight line from the nearest point of the property line of the lot that contains the outdoor cultivation and outdoor cultivation ancillary uses, to the nearest point of the property line of the enumerated use(s).

2. The cannabis site shall be setback a minimum of fifty (50) feet from any public road.

3. The cannabis site shall be setback a minimum of two hundred fifty feet (250) feet from the nearest offsite structure. This setback does not apply to non-habitable sheds, outbuildings, and similar non-habitable accessory structures. The distance specified in this Section shall be measured in a straight line from the nearest point of the cannabis site to the nearest applicable structure on adjoining properties.

4. The cannabis site shall be setback a minimum of one hundred fifty (150) feet from a stream, river, or watercourse.

SECTION 5. Subsection D of Section 20.69.060 of the Monterey County Code is amended to read as follows:

D. Exceptions to setbacks from the nearest offsite structure may be considered by the appropriate authority. The following criteria may be used in consideration of such an exception: weather patterns; existence of topographical features; trees and shrubs; and possible development of landscape berms to separate cannabis uses from nearby residential uses on a neighboring lot. Setbacks may also be reduced for supportive nursery cannabis sites and for outdoor cultivation ancillary uses, provided that such uses are located entirely within an approved structure that incorporates adequate odor mitigation technologies. In no case shall the setback from a school, playground, youth center, child care center, or drug recovery facility be less than a one thousand (1,000) foot radius. This Subsection does not restrict the ability of the appropriate authority to consider odor mitigation techniques, including but not limited to, landscape vegetation strips which may include other fragrant vegetation to mask the odors, odor neutralizing technologies, or relocation of cannabis sites as part of the consideration of a permit required pursuant to this Chapter.

SECTION 6. Subsection J of Section 20.69.060 of the Monterey County Code is amended to read as follows:

J. The canopy of outdoor cultivation shall be limited to two and one half percent (2.5%) of the total square footage of the lot, not to exceed twenty thousand (20,000) square feet of canopy on any one lot.

SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. This Ordinance shall become effective on the thirty-first day following its adoption or upon California Coastal Commission confirmation that County's ordinance satisfies the Coastal Commission's certification order, whichever occurs later.

PASSED AND ADOPTED on this 18 day of May 2021, by the following vote:

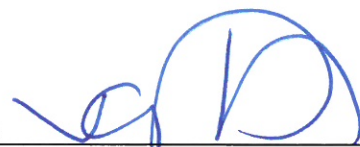
AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None
ABSTAIN: None



Chair, Wendy Root Askew
Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM BY:

/s/Kelly Donlon

Kelly L. Donlon
Deputy County Counsel