



Monterey County

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Board Report

Legistar File Number: ORD 17-015

December 05, 2017

Introduced: 11/22/2017

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

REF150048 - Inland & REF160042 - Coastal
Commercial Cannabis (Marijuana) Regulations

Public hearing to consider:

- a. Adoption of an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate medicinal and adult-use commercial cannabis activities in the inland unincorporated area of Monterey County consistent with state law;
- b. Adoption of a resolution of intent to:
 1. Adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with state law; and
 2. Amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site;
- c. Adoption of an ordinance amending Chapter 7.90 to the Monterey County Code to add commercial adult-use cannabis activities to the County's current commercial medical cannabis permit regulatory structure and to regulate the operation of commercial adult-use cannabis activities in a manner that is consistent with state law; and
- d. Adoption of an ordinance amending Section 7.02.060 of the Monterey County Code to add commercial adult-use cannabis activities as a type of business that must obtain a business license within the unincorporated area of Monterey County.

Location: County-wide

Proposed CEQA action: Statutorily exempt pursuant to Business and Professions Code Section 26055(h) (CEQA exemption for the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review).

RECOMMENDATION:

The Board cannabis ad hoc committee recommends that the Board of Supervisors:

- a. Find the project is the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from the California Environmental Quality Act pursuant to Business and Professions Code Section 26055(h);
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate medicinal and adult-use commercial cannabis activities in the inland unincorporated area of Monterey County consistent with state law;
- c. Adopt a Resolution of Intent to:

1. Adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with state law; and
 2. Amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site.
- d. Adopt an ordinance amending Chapter 7.90 to the Monterey County Code to add commercial adult-use cannabis activities to the County's current commercial medical cannabis permit regulatory structure and to regulate the operation of commercial adult-use cannabis activities in a manner that is consistent with state law; and
- e. Adopt an ordinance amending Section 7.02.060 of the Monterey County Code to add commercial adult-use cannabis activities as a type of business that must obtain a business license within the unincorporated area of Monterey County.

If adopted by the Board, the ordinances amending Title 21 (Inland Zoning Regulations), Chapter 7.90 (Commercial Cannabis Business Permits), and Chapter 7.02 (Business Licenses) would become effective on the 31st day following adoption (January 5, 2018). By adopting a Resolution of Intent, the amendments would be submitted to the Coastal Commission for certification. After Coastal Commission review of the ordinance and LCP amendment, the Coastal regulations would need to return to the Board of Supervisors for adoption before taking effect.

SUMMARY:

At this time, with the exception of adding adult-use commercial activities, only technical non-policy related changes are proposed to the County's cannabis regulations. Other, more complicated policy decisions such as those relating to outdoor cultivation, dispensary/retailer setbacks, zoning district limitations, firearms for security reasons, Type 5 (large) cultivation license types, and Type 12 microbusiness license types are still being discussed and evaluated. Staff anticipates that another round of ordinance revisions will be necessary starting in 2018 once policy matters are vetted and once state licensing regulations are settled.

Highlights of the currently proposed changes to the Inland Zoning Ordinance (Title 21) include:

1. Striking the term 'medical' throughout so that the ordinances are applicable to all commercial cannabis business;
2. Adding a new license Type 1C "specialty cottage" cultivation type which allows for a combination of natural and artificial light of 2,500 square feet or less of canopy area or 500 square feet or less of canopy area for indoor cultivation;
3. Update definitions including making the term "Retailer" interchangeable with "Dispensary"; and
4. Removing the "Transportation" license type and adding language that would permit self-distribution/transportation for cultivators, nurseries, and manufactures provided they comply with the distribution requirements imposed by the state (detailed further in **Attachment A**).

The same general changes are proposed for Chapter 7.90 (Commercial Cannabis Business Permits) and Chapter 7.02 (Business Licenses) to make all the regulations internally consistent. In addition, a change is proposed in Chapter 7.90 to create Business Permit types “M” (for medicinal cannabis activities) and “A” (for adult use cannabis activities) consistent with State law.

Within the coastal areas of the County, changes to the previously considered draft ordinance amending the Coastal Zoning ordinance (Title 20) would be the same as those proposed in the inland areas with the following additional revisions:

1. Minor edits recommended by the Coastal Commission staff during their review of the previous draft ordinance; and
2. Inclusion of the Agricultural Conservation (AC) zoning district as a zone where commercial cannabis cultivation and non-volatile manufacturing are uses allowed subject to a Coastal Development Permit in each case (previously allowed only in the Coastal Agricultural Preserve “CAP” zoning or industrial zones).

These ordinances are intended to be consistent with the federal enforcement priorities and are consistent with state law. Having taken all of the information into account, the ad hoc committee recommends approval of the regulations as presented.

DISCUSSION

Currently, the County’s cannabis regulations apply only to medical cannabis activities. These regulations were adopted based on state law enacted in 2016, the Medical Cannabis and Regulatory Safety Act (MCRSA). Since that time, the voters in California have approved the Adult Use of Marijuana Act (AUMA), and the state has consolidated MCRSA (medical) and AUMA (adult-use) into the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act or “MAUCRSA” (Senate Bill 94).

On January 1, 2018, a state licensing program for commercial cannabis activities will be in effect and the state will begin to accept applications. To maintain local control over commercial cannabis activities, the County must adopt local regulations for medicinal and adult use activities before State licensing occurs. Procedurally under MAUCRSA, the County must provide the state with copies of local regulations and an internal point person for communications with the state. Once notified by the state of an application for a state cannabis license, the County will have 60 days to inform the state that an applicant is in compliance with local regulations, is not in compliance, or is in the process of obtaining local authorization. Without specific local regulations for adult-use cannabis activities, the County’s communication with the state in this regard could be problematic. For this reason, staff recommends that the Board of Supervisors adopt ordinance amendments that would provide regulations for both medicinal and adult-use commercial cannabis activities before the end of this year.

In response to changes in the state law, County staff, working with the Board ad hoc committee on cannabis, drafted ordinances that would amend the County’s cannabis regulations to control both medicinal and adult-use commercial cannabis activities, as well as better align with the current state law. Specific regulations recommended for updating include: Title 20 (coastal zoning); amendment to the North County Land Use Plan; Title 21 (inland zoning), Chapter 7.90 (Commercial Cannabis Permits); and Chapter 7.02 (Business Licenses).

Planning Commission Recommendation

On September 27, 2017, the Planning Commission conducted a workshop to consider the draft ordinances. The Planning Commission provided direction to staff to work with the Board ad hoc committee to explore allowing self-distribution for cultivators and manufacturers, to review the ban on firearms for security at cannabis sites, and to separately consider amendments to the North County Land Use Plan which are specific to the former National Kaiser Refractories site. Based on Planning Commission direction, and discussions with the ad hoc committee, staff revised the ordinances to allow cultivators, nurseries, and manufacturers to self-distribute their own products provided they comply with the distribution requirements of the state. After consultation with the Sheriff and District Attorney, the firearm restriction in the ordinances was not removed at this time, but slated for further analysis as a potential revision in a later round of ordinance revisions.

On November 15, 2017, the Planning Commission held a public hearing to make a recommendation to the Board of Supervisors on the land use components of the regulatory package. At the hearing, the Commission adopted a Resolution recommending that the Board of Supervisors adopt the ordinances amending Titles 20 and 21, but with one amendment to the draft text. The Commission recommended that the Board amend the draft ordinances to remove the required 600-foot setback from public parks. The Commission also recommended that the Board consider the North County Land Use Plan text amendment separately, rather than as part of the overall ordinance package.

At this time, staff has not incorporated the Planning Commission's suggested edit of removing the public park setback in the draft ordinances before the Board because staff believes that additional analysis of such a change is warranted. Removing the setback from public parks would have significant countywide effects on where cannabis operations may be permitted and could lead to incompatible land uses without additional analysis. In addition, staff recommends that the Board consider the North County Land Use Plan text amendment together with the proposed regulatory changes because the text amendment continues to be part of the County's overall efforts to identify zones and locations where cannabis uses could be permitted. Additional information about the text amendment is provided below.

North County Land Use Plan text amendment

With the California Coastal Commission (CCC) staff's recommended changes incorporated in the coastal zoning ordinance, an LCP amendment is necessary in order for cannabis uses to be permitted at the former Kaiser Refractories site in Moss Landing due to the "*coastal dependent industrial*" designation and CCC staff's determination that cannabis is not a coastal dependent use.

Understanding that the Board intent was for cannabis uses to be allowed at the Refractories site, County staff withdrew Title 20 amendments from coastal review in February 2017, in hopes to find a solution where cannabis uses could be allowed at this site in Moss Landing. This is the only site with the "coastal-dependent" overlay (due to the seawater intake system) where cannabis uses were contemplated and CCC staff agrees the former Refractories site is an appropriate location for cannabis uses.

In coordination with the CCC staff, county staff prepared a text amendment to the North County Land Use Plan and Coastal Implementation Plan Part 2 (Regulations for Development in the North County

Land Use Plan Area) that would authorize review and permitting of commercial cannabis activities at the former Refractories site despite the “*coastal-dependent*” land use overlay. This means that the property would remain Heavy Industrial with a “coastal dependent” land use designation, but that commercial cannabis uses could be considered through a comprehensive permitting process requiring a Coastal Development Permit. As noted above, the Planning Commission voted to defer action on this portion of the LCP amendments. However, the ad hoc committee recommends Board approval in order to proceed with permitting cannabis uses at the Refractories site that were established prior to county regulations. Many of the existing operations have been making efforts to bring the site into compliance. Only those not making effort to comply are currently being cited by Code Compliance.

The Title 20 amendments could move forward without changes to the North County Land Use Plan. However, cannabis activities would not be allowed at the Refractories site without amendments to the North County Land Use Plan and Implementation Plan because CCC staff interprets commercial cannabis to not be a “coastal-dependent industrial use.” If the LCP amendment *is not* approved as part of the current efforts to update the cannabis regulations, any permit request for cannabis uses would need to include a request for an LCP amendment as part of their permit or the permit application could be denied. If the LCP amendment *is* approved, then an Interim General Development Plan must be processed and approved before cannabis operations can be permitted at this Site.

Next Steps

Per direction of the ad hoc committee, staff is working on an ordinance to consider amending set back regulations for cannabis operations. Following that amendment, staff will develop final clean-up ordinances. On November 16, 2017, the state cannabis licensing agencies released emergency regulations implementing state law. Staff will review these regulations and work with the ad hoc committee to consider additional changes that may be warranted to the County’s cannabis regulations (e.g. firearms).

California Environmental Quality Act (CEQA)

Section 15282 of the CEQA Guidelines provides an exemption for projects that are specifically covered in the California Code (by statute). In the recent changes to state law concerning commercial cannabis operations, the state legislature provided a statutory exemption from CEQA for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review (*See* Business and Professions Code Section 26055(h)). The County’s draft ordinances require a Use Permit or Coastal Development Permit for all commercial cannabis activities, and the Use/Coastal Development Permits are individually subject to CEQA review. Therefore, these ordinances and LUP amendment are statutorily exempt from CEQA review pursuant to Section 15282 of the CEQA Guidelines.

A more detailed discussion is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

The following agencies and departments have been involved in preparation of the draft ordinances:

Resource Management Agency
CAO’s Office

Health Department/Environmental Health Bureau
Economic Development Department
Sheriff's Office
Treasure/Tax Collector
Agricultural Commissioner's Office
District Attorney's Office
County Counsel's Office

FINANCING:

Funding for staff time associated with drafting these amendments is included in each Departments FY17-18 adopted Budgets.

Adoption and implementation of these amended regulations is not anticipated to significantly impact services beyond those previously considered in adopting the original commercial medical cannabis regulations in 2016. Effectively, the size of the program will not be expanding because these ordinance amendments do not remove the zoning restrictions that limit where and how cannabis activities may occur.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents an effective response to our County customers' needs. Processing these amendments will allow the County to process applications in a timely manner in accordance with new state law.

Check the related Board of Supervisors Strategic Initiatives:

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

Prepared by: Craig W. Spencer, Senior Planner, ext. 5233
Reviewed by: Brandon Swanson, RMA - Planning Services Manager
Approved by: Carl P. Holm, RMA Director

The following attachments are on file with the Clerk of the Board:

- Attachment A - Discussion
- Attachment B - Draft Ordinance amending Title 21 (clean version)
- Attachment C - Draft Ordinance amending Title 21 (redline version)
- Attachment D - Draft Resolution of Intent to adopt:
 - Exhibit 1 - Draft Ordinance amending Title 20 (clean version)
 - Exhibit 2 - Draft North County Land Use Plan text amendments
- Attachment E - Draft Ordinance amending Chapter 7.90 (clean version)
- Attachment F - Draft Ordinance amending Chapter 7.02 (clean version)
- Attachment G - Planning Commission Recommendation (Resolution #17-047)

Attachment H - Draft Ordinance amending Title 20 (redline version)

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; 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 Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Farmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Planning File REF150048