

**Board of Supervisors
January 9, 2024**

- a. Consider amending the requirements for the Outdoor Commercial Cannabis Cultivation Pilot Program related to proof of prior cultivation;
- b. Consider setting a limit for aggregate outdoor cultivation canopy under the Pilot Program;
- c. Consider directing Housing and Community Development staff to amend Chapters 20.69 (Coastal) and 21.69 (Inland) of the Monterey County Code; and
- d. Provide further direction as appropriate.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

- e. Consider amending the requirements for the Outdoor Commercial Cannabis Cultivation Pilot Program related to proof of prior cultivation;
- f. Consider setting a limit for aggregate outdoor cultivation canopy under the Pilot Program;
- g. Consider directing Housing and Community Development staff to amend Chapters 20.69 (Coastal) and 21.69 (Inland) of the Monterey County Code; and
- h. Provide further direction as appropriate.

SUMMARY/DISCUSSION:

At the Board of Supervisors Cannabis Committee (Committee) meeting on November 2, 2023, there was discussion regarding requirements Chapters 20.69 and 21.69 of Monterey County Code (MCC). These Chapters pertain to the Outdoor Commercial Cannabis Cultivation Pilot Program (Pilot) within coastal and inland zones respectively. Current regulations require an applicant to provide proof that cannabis had been cultivated on the site under the medicinal cannabis rules that preceded the commercial cannabis regulations. Proof includes evidence that cannabis was cultivated on the site prior to January 1, 2016. In discussing the requirements, the Cannabis Committee was split on the recommendation to amend the outdoor cannabis cultivation, acknowledging prior decisions from the Board of Supervisors, most recently in August of 2022 so the Cannabis Program (Program) staff were directed to return to the full Board to reconsider with the narrow focus of removing the requirement for proof of prior cultivation.

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.”

It should be noted that real properties are qualified through this requirement, not individual applicants.

As presented in the previous Board report, Growing Equity Together (GET) participants have faced numerous obstacles that hinder their ability to enter the commercial cannabis industry within our County:

- Inability to secure a property within an allowable zoning area.
- Challenges in meeting requirements to submit a complete land use permit application.
 - 10 of the 14 verified equity applicants previously cultivated under the Compassionate Use Act (Prop 215) and are trying to restart outdoor cultivation activities.
 - Many of these heritage Prop 215 growers no longer own/lease the original property, which makes them ineligible for the Pilot.
 - Retirement, Remediation and Relocation (RRR) was a benefit to verified equity applicants under the original GET framework and would allow applicants who previously cultivated under Prop 215 to transfer development rights to a new property, however the RRR benefit was later removed from the GET Program by the Board.
- While some operators may qualify for an exemption from the California Environmental Quality Act (CEQA), those who do not would face steep costs and extended timelines for approval of their land use entitlements.
 - An Environmental Impact Report (EIR) pertaining to outdoor cultivation within District 5 was allocated within the budget of a separate grant—the Local Jurisdiction Assistance Grant—and would have removed the need for site-specific CEQA studies, but funding for the EIR was later reallocated by the Board.

Despite being in place for four and a half years, the Pilot has resulted in the following:

- 10 GET participants interested in the Pilot:
 - One participant has obtained a provisional Department of Cannabis Control (DCC) Outdoor license for outdoor cultivation within District 5 but must also obtain local authorization before operations may begin. This participant is working to achieve compliance with the required land use and cannabis business permits.
 - Three participants have submitted land use permit applications but have not yet submitted cannabis business permit applications or obtained DCC licenses.
 - One participant withdrew their land use permit application.

- 2 non-equity applicants interested in the Pilot:
 - One applicant was outside of the allowable area and their land use permit application was voided.
 - One applicant withdrew their land use permit application.

To provide additional opportunity to participate in the commercial cannabis industry while preserving the intent of the Pilot, staff recommends the Board consider:

- Removal of the requirement to provide proof of cannabis cultivation on the lot prior to January 1, 2016.
- Limit aggregate cultivation canopy to 300,000.
 - Pursuant of MCC 20/21.69.060(J), canopy is currently limited to 20,000 per lot.

In August 2022, the Board approved the extension of the Pilot to 2030. Should the Board direct staff to amend the code, HCD requests guidance on the prioritization of item relative to other priority work tasks.

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
- Health & Human Services
- Infrastructure
- X Public Safety

Prepared by: Joann Iwamoto, Cannabis Program Manager

Approved by: Craig Spencer, Acting Housing and Community Development Director

Attachments:

- A. Current Versions of Monterey County Code Titles 20.69 and 21.69