

Attachment A

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DISCUSSION

(Cannabis Ordinance Updates)

Overview

On June 27, 2017, Governor Brown signed into law California's budget bill, which appropriated \$94.6 million to implement the State's cannabis laws and included SB 94 (the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act or MAUCRSA). MAUCRSA consolidates the Medical Cannabis and Regulatory Safety Act (MCRSA) and the Adult Use of Marijuana Act (AUMA) into one single regulatory system for commercial cannabis activity. The consolidation of the two laws presented several challenges as MCRSA was passed legislatively and AUMA was a ballot measure, which includes a more complicated and limited amendment process. As such, in large part most of MCRSA was repealed and AUMA was amended. More details on the changes to the process and regulatory requirements resulting from MAUCRSA are discussed below.

State-Local License Process for Commercial Cannabis Activities

MAUCRSA outlines a process that requires local verification of applicants before state cannabis licenses can be issued. Specifically, MAUCRSA requires:

- Local governments to provide the Bureau of Cannabis Control ("Bureau") a copy of any ordinance related to commercial cannabis activity and a point of contact to serve as a liaison between the state licensing entities and the local jurisdiction;
- Local governments to contact the Bureau whenever there is a change in local regulations or the point of contact; and
- The state is required to deny a state license for an activity that the local government has informed the Bureau is prohibited within its jurisdiction.

Prior to issuing a state license:

- The state must contact the local government to verify that the applicant is following local regulations;
- Once notified by the state, a local government will have 60 days to inform the Bureau of an applicant's compliance or non-compliance; and
- The state and local government must determine the method of notification, which may include written notice, or by a state licensing authority's access to any local registry, database or other platform as specified by the local government.

Changes to the State License Types

MAUCRSA created two categories of licenses: an "M" for medicinal or an "A" license for adult-use. In addition to creating the two categories, MAUCRSA also creates new business license types and modified some of the existing license types that were contained in MCRSA. Key changes to license types include:

- The transporter license (Type 12) from MCRSA has been removed. Only a licensed distributor or "microbusiness" can transport commercial cannabis products between licensees.
- Type 1C or "specialty cottage" license type has been created, which allows for a combination of natural and artificial light of 2,500 square feet or less, up to 25 mature plants for outdoor cultivation, or 500 square feet or less for indoor cultivation.
- A Type 5 license allows for outdoor cultivation greater than one acre; Type 5A allows for indoor cultivation greater than 22,000 square feet; and Type 5B allows for mixed light

cultivation greater than 22,00 square feet. The state may not issue these Type 5 licenses until January 1, 2023; and

- Type 12, microbusiness. A microbusiness allows a license holder to do the following: cultivate an area of less than 10,000 square feet, act as a distributor, act as a manufacturer using only non-volatile solvents, and act as a dispensary.

All licenses will be denoted with an “M” for medical, or “A” for adult use.

NOTE: While the new state definition of the Type 1C licenses include indoor, mixed-light, and outdoor cultivation, the County’s draft regulations omit the outdoor component of Type 1C license because current regulations do not permit outdoor commercial cannabis cultivation in the unincorporated areas.

Other notable changes in State law include:

- Providing the County with the option to allow smoking, vaping, and/or ingesting cannabis on premises of a retailer or microbusiness;
- Cannabis businesses can be issued state temporary event license authorizing onsite cannabis sales/consumption for people age 21 years and over at a county fair or district agricultural event; and
- A retailer must have a licensed premise, which is a physical location, but that location may be closed to the public and they can conduct sales exclusively for delivery.

MAUCRSA also creates “cannabis cooperative associations,” which must be licensed as such by the state. A cannabis cooperative association must be made up of three or more natural persons who are engaged in cultivation, marketing, or selling of cannabis. However, members of an association are limited to cultivators who only hold a single Type 1 or Type 2 license. Also, collectively, members of an association cannot grow more than four acres of total canopy throughout the state.

Local Regulations

Monterey County currently does not have regulations pertaining to adult-use/recreational cannabis activities. Current regulations were adopted pursuant to MCRSA (medicinal only) and include:

- Inland zoning regulations for commercial medical cannabis activities (Title 21)
- Commercial Medical Cannabis Business Permits (Chapter 7.90);
- Medical Cannabis Business Licenses (Chapter 7.02); and
- A tax on commercial cannabis activities (Chapter 7.100) – applicable to both medical and adult-use cannabis businesses.

In addition, the Board of Supervisors adopted a Resolution of Intent to adopt coastal zoning regulations (Title 20) in July 2016; however, the regulations have not been certified by the California Coastal Commission and never went into effect. More information on the coastal regulations are discussed below.

Suggested Edits to Local Regulations

Staff, working with the cannabis ad hoc committee of the Board of Supervisors has discussed potential options along with the timing associated with updating the County's local cannabis regulations. As discussed in the staff report, it is the desire of the ad hoc committee to provide for regulations addressing commercial adult-use cannabis activities prior to January 1, 2018 when the State cannabis licensing programs becomes operative. The options for accomplishing the desired result that were discussed with the ad hoc committee included:

- Option 1: Striking the term "medical" throughout the existing regulations to make the existing regulations applicable to all commercial cannabis activities (medical and adult-use) – *recommended*.
- Option 2: Temporarily prohibit adult-use cannabis activities while the County works on new or updated ordinances addressing adult-use cannabis and keep the existing medical regulations in place.
- Option 3: Prohibit adult-use cannabis activities in Monterey County (long-term); or
- Option 4: Develop separate criteria for adult-use cannabis activities in Monterey County before January 1, 2018.

Option 4 was not chosen due to timing and mandatory processes involved with ordinance considerations, making it difficult to have ordinances adopted before January 1, 2018 and because, following the lead of the State, it was thought prudent to maintain one set of cannabis regulations for both medicinal and adult-use activities.

Option 3 was not chosen as a matter of policy. It was decided that adult-use cannabis activities need not be banned while medical cannabis activities are being permitted.

Option 2 was not chosen because, if ordinances can be amended as described in Option 1 before January 1, 2018, a temporary ban would not be needed.

Option 1 was chosen because, from a land use standpoint, cannabis activities are substantially the same whether the products are provided for recreational use or medicinal use.

In preparing draft ordinances following Option 1, staff and the ad hoc committee considered a variety of edits that were either prompted by changes in state law or are edits to the existing ordinances that have been previously identified or requested. Changes prompted by state law are discussed above while local edits to the existing ordinance would include topics such as:

- Outdoor cultivation
- Zoning District limitations
- Existing structure policies
- Dispensary setbacks; and
- Other non-substantive regulatory clarifications

In deciding when and how to address all of these potential topics and/or edits within the ordinances, the following criteria and circumstances were considered:

1. The goal of having ordinances regulating medicinal and adult-use cannabis activities adopted prior to January 1, 2018;
2. The fact that State regulations for the licensing program are yet to be finalized and pending final state regulations, additional local ordinance amendments might be needed (after January 1, 2018);
3. Some revisions require additional environmental review and hence, additional processing time; and
4. Policy changes needing more time and analysis for vetting by staff and through public meetings.

With these factors in mind, staff prepared draft ordinances (Title 20 and Title 21) that would:

1. Strike the term ‘medical’ throughout so that the ordinances are applicable to all commercial cannabis business;
2. Add 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 (outdoor excluded);
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.

The same general changes are proposed for Chapter 7.90 (Commercial Medical 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. Edits recommended by the California 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).

In coordination with the California Coastal Commission staff, a text amendment is also proposed 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 appropriate review and permitting of commercial cannabis activities at the former Kaiser National Refractories site despite the “coastal-dependent industrial” land use designation. This particular amendment is the result of ongoing negotiations with Coastal Commission staff regarding certification of the

County's coastal regulations for cannabis. Both the County and the Coastal Commission staff have recognized that cannabis activities could represent an appropriate reuse of the former Kaiser National Refractories site which has perimeter security fencing, infrastructure, and facilities already in place. A comprehensive General Development Plan for the site would still need to be approved to allow new uses at the site even after the suggested North County Land Use Plan text amendments.

Not included in the draft ordinances are:

- Type 5 - large cultivation licenses (over 22,000 square feet) – Not applicable until 2023;
- Type 12 – microbusiness licenses – The current ordinances do not have a zone where a retailer, cultivation, manufacturing, and distribution would be permissible on one site – needs more analysis;
- On-site consumption at a retailer or microbusiness – Need policy direction and analysis;
- Cannabis-related events – Need policy direction and analysis (County also working on events regulations in general);
- Outdoor cultivation – requires policy direction, analysis and environmental review;
- Zoning Districts – requires policy direction, analysis, and environmental review;
- Existing structures policy - requires policy direction, analysis and environmental review; and
- Dispensary setbacks - requires policy direction, analysis and environmental review.

It is the intent of staff and the ad hoc committee to consider, in more depth, setbacks for dispensaries followed by the other topics once the final (non-emergency) adoption of state regulations which will affect the manner in which some or all of these topics can or should be regulated.

Planning Commission Recommendation

On September 27, 2017, the Planning Commission conducted a workshop to consider the draft ordinance amending Titles 20 and 21 along with the proposed North County Land Use Plan amendment and provided direction to staff to consider the following changes:

1. Permit self-distribution for cultivators and manufacturers;
2. Review the ban on firearms for security at cannabis sites; and
3. Separate consideration of amendments to the North County Land Use Plan which are specific to the former National Kaiser Refractories site.

Note: The ordinances amending Chapter 7.90 and 7.02 of the Monterey County Code are not “zoning regulations” and hence not subject to Government Code § 6500 *et seq.* (Planning and Zoning Law). Therefore, a Planning Commission recommendation was not required for these ordinances. These ordinances were introduced by the Board of Supervisors on November 14, 2017.

Self-Distribution

Current state law provides that only a Type 11 (Distributor licensee), a Type 12 (Microbusiness licensee), or licensed non-profit can transport cannabis commercially. The County ordinances do not address Microbusiness or licensed non-profits, and restrict the potential for obtaining a

Distributor license type to Industrial or Heavy Commercial zoning districts within the County. Many of the cannabis cultivation and nursery operations exist, or are proposed to exist, in the Farmland zoning district where a Distributor license type would not be permitted. This could potentially create logistical challenges for cultivators and nurseries to get their products to the next step in the supply chain because they would need to rely on an unknown and still forming third-party distribution industry. In response to public testimony and Planning Commission direction to consider allowing cultivators and nurseries in the Farmland zoning district to self-distribute, staff worked with the Board ad hoc committee to revise the draft ordinances to allow for self-distribution.

By allowing self-distribution, additional criteria becomes applicable that would not otherwise be imposed on those cultivators who will not be self-distributing. State law contains restrictions and criteria for the transportation and distribution of commercial cannabis including but not limited to:

- Providing transportation security meeting state standards;
- Arranging for testing of products and storing the products while testing occurs;
- Following the required chain of custody protocol;
- Creating and maintaining shipping manifests along with other required documentation; and
- Packaging and labeling products appropriately before they are transported to a retailer.

Sections 20/21.67.050.B.12 and 20/21.67.060.B.7 of the proposed ordinance would allow cultivators, nurseries, and manufacturers to self-distribute/transport without a separate use permit provided that the following criteria are met:

- The permittee holds the appropriate state license type (once applicable);
- Only products produced onsite are distributed/transported (as opposed to a third-party distributor serving other permittees); and
- Self-distribution/transportation is not restricted under the terms or conditions of an approved Use Permit/Coastal Development Permit. Permit restrictions for self-distribution/transportation may be applied in certain cases because some sites have significant limitations that would preclude them from meeting the additionally applicable criteria described above.

For specific language see the Sections 20/21.67.050.B.12 and 20/21.67.060.B.7 in the attached ordinances (**Attachments B and D**).

Firearms

Staff analyzed lifting the prohibition on security carrying firearms for protection of cannabis business sites with County law enforcement (Sheriff and District Attorney Offices) at the October 16th cannabis ad hoc committee meeting, and a subsequent ad hoc meeting on November 2nd. This topic was revisited based on testimony presented by members of the public at the September 27th Planning Commission workshop. At the November 2nd ad hoc meeting, County Law Enforcement expressed concern over the risks involved with permitting firearms to be carried on cannabis business sites as well as conformance to federal enforcement priorities described in the Cole Memo. County law enforcement's position is that strong security measures such as cameras and fences are ultimately a safer deterrent to theft than armed security personnel. The ad hoc committee directed County law enforcement and the Office of the County Counsel to conduct further research on allowing armed security and return to the committee after January 1st. The research will be presented so that the issue can be considered as part of the more comprehensive ordinance update.

Therefore, the draft ordinances have not been updated to remove the ban on security carrying firearms on cannabis sites at this time.

Former Kaiser National Refractories site in Moss Landing

The Planning Commission recommended separating consideration of the North County Local Coastal Program (LCP) amendment for the former Kaiser Refractories site (“Site”) from the County’s cannabis ordinance updates. The Commission expressed concern that this amendment applied only to one property, whereas the rest of the amendments applied County-wide. The Commission requested a site-specific analysis of the LCP amendment through a separate hearing.

The proposed LCP amendment for the Site was the result of negotiations with California Coastal Commission (CCC) staff on the certification of the County’s coastal zoning ordinance amendments (Title 20). In November 2016, the coastal ordinance was transmitted to the CCC staff for certification. During CCC staff review of the ordinance, modifications were suggested that would prohibit commercial cannabis activities on properties having a “coastal-dependent industrial” land use designation. Most significantly, this includes the former Kaiser Refractories site in Moss Landing. This area is zoned Heavy Industrial, and was intended by both the Board of Supervisors and the ad hoc committee to be a property eligible for consideration of permitting commercial cannabis uses under the proposed County regulations. It is also a site where cannabis operations are already occurring and are in the permitting process to obtain approvals for this use.

County staff withdrew the draft ordinance until agreement could be reached with CCC staff on changes that would allow operations at the former refractory site. After discussions between County staff and CCC staff, it was agreed that commercial cannabis activities would represent an appropriate reuse for the Site. With the CCC staff’s recommended changes incorporated in the coastal zoning ordinance, a LCP amendment is necessary to clarify that cannabis uses may be permitted (with an Interim General Development Plan) at the Site despite the “coastal dependent industrial” designation. 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. 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 Site without the LCP amendment 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. 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. Ultimately, the Site would be subject to the revised Moss Landing Community Plan, which is currently in process and nearing completion.

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