



Monterey County

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Board Report

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REF150048 - Inland & REF160042 - Coastal

Commercial Medical Cannabis (Marijuana) Regulations

Public hearing to consider:

- a. Adopt a Negative Declaration on commercial medical cannabis (marijuana) regulations;
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis activities in the inland unincorporated area of Monterey County;
- c. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis (marijuana) activities in the coastal zone of unincorporated Monterey County;
- d. Introduce, waive reading, and consider ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis (marijuana) permit for commercial medical cannabis activities;
- e. Introduce, waive reading, and consider ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis (marijuana) permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- f. Introduce, waive reading, and consider ordinance adding 7.100 to impose a County general tax on commercial cannabis (marijuana) businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- g. Set July 19, 2016 at 10:30 a. m. as date and time to adopt the ordinances adding Chapter 7.90, adding Chapter 7.95, and adding Chapter 7.100.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

The Board Ad Hoc Committee recommends that the Board of Supervisors:

- a. Adopt a Negative Declaration on commercial medical cannabis (marijuana) regulations;
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis activities in the inland unincorporated area of Monterey County;
- c. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis (marijuana) activities in the coastal zone of unincorporated Monterey County;
- d. Introduce, waive reading, and consider ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis (marijuana) permit for commercial medical cannabis activities;
- e. Introduce, waive reading, and consider ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis (marijuana) permit for personal

- cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- f. Introduce, waive reading, and consider ordinance adding 7.100 to impose a County general tax on commercial cannabis (marijuana) businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- g. Set July 19, 2016 at 10:30 a. m. as date and time to adopt the ordinances adding Chapter 7.90, adding Chapter 7.95, and adding Chapter 7.100.

The Planning Commission (PC) has forwarded a recommendation to not adopt the ordinances as drafted. PC Resolution 16-015 includes ideas that the PC suggests the Board consider.

SUMMARY:

For the past year, County staff has been developing permanent regulations for the permitting of Commercial medical cannabis (marijuana) activities in Monterey County. On June 19, 2015, the Board directed staff to prepare an urgency ordinance declaring an initial 45 day moratorium on the establishment and operation of medical marijuana dispensaries and the commercial cultivation of marijuana for medical purposes (Referral No. 2015.05). From that referral the Board established an Ad Hoc Committee to provide guidance to staff on developing the ordinances. On March 2, 2016, in addition to the development of the ordinances the Board, foreseeing that the Statewide initiatives would likely include taxes, requested staff to report on options for a local tax initiative associated with both the Statewide initiative and the local ordinance (Referral No. 2016.01).

Regulations now before the Board of Supervisors (Board) for consideration include input from a variety of sources:

- Board Ad Hoc Committee
- Staff from District Attorney, Sheriff, Treasurer/Tax Collector, Ag Commissioner, Health, RMA (Planning, Code Compliance).
- Interviews with other jurisdictions to evaluate their experiences.
- State legislation and subsequent efforts for developing regulations.
- Three Stakeholder meetings
- Professional Services Consultant (HdL Companies)
- Planning Commission (workshop and hearing)

The District Attorney and Sheriff expressed significant concerns based on issues that other counties have experienced. Stakeholder and Planning Commission meetings heard many requests to open cultivation everywhere.

Staff worked with the ad hoc committee to develop a county-wide permitting structure for medical marijuana as follows:

1. Zoning. Land use regulations for commercial medical cannabis (marijuana) activities in coastal (Title 20) and non-coastal (Title 21, inland) areas. Generally a Use Permit would be required in any allowed situation. Cultivation would be allowed in existing warehouse and greenhouse facilities in industrial and farmland zoning designations provided the facility was established prior to January 1, 2016. No new facilities would be allowed for medical marijuana operations. Staff estimates up to 150-300 permits could be permitted using these criteria. Use Permits are discretionary entitlements that run with the land; however, conditions are often included to evaluate condition compliance periodically. A Chapter would be added that

establishes minimum standards such as setbacks, perimeter security, compliance with State law, avoidance of environmental impacts, and avoidance of activities that would conflict with Federal enforcement priorities. Significant items for consideration include prohibiting outdoor cultivation and limiting the zoning districts in which a commercial medical cannabis activity may be permitted. Affects of outdoor cultivation is far more complicated to analyze and understand than those allowing the use of existing warehouse and greenhouse facilities.. The ad hoc committee intentionally separated and focused on writing the indoor piece at this time and to get these regulations in place as a first step. The plan is to return to the outdoor components for further analysis and consideration subsequently after adoption of the current draft ordinances.

2. **Business Permits.** An annual ministerial permit issued to each business. Staff from various departments would review applications to assure specific criteria are met such as health standards, background check, pesticide use, security standards, and proper operating protocols are in place. Subsequent inspections may be made to assure compliance. In order to issue a Business Permit, the business would be required to propose operations on a property with an approved Use Permit or Coastal Development Permit pursuant to the zoning requirements above. Cultivation of up to 100 square feet of cannabis for personal use by a qualified patient or primary caregiver would be exempt from land use entitlements but would require a personal cultivation permit pursuant to Chapter 7.95. A separate Chapter 7.95 was drafted for permitting personal grows in order to monitor that they meet the guidelines to qualify as a personal grow.
3. **Business License.** An annual license issued to each business. Currently Monterey County does not require business licenses. In order to receive a business license, the business must have valid Use Permit and Business Permit(s). With the other matters being more pressing and the need to establish infrastructure for a licensing program, the ad hoc committee deferred action on this component for a later time.
4. **Taxation.** Chapter 7.100 would impose a County general tax on all commercial cannabis business. Establishing a taxing structure for marijuana activities requires a vote. Staff drafted an ordinance and a resolution to place this matter on the ballot for the November 2016 General Election. This tax structure was developed in consultation with HdL Companies to take into account what other jurisdictions and the state are doing or contemplating. It is tiered with a 5-year phase in period to the ultimate tax level in order to allow business to get established.

These ordinances are intended to be consistent with state law (the Medical Marijuana Regulation and Safety Act or MMRSA) and with federal enforcement priorities for marijuana. Having taken all of the information into account, the ad hoc committee is recommending the regulations as presented. These regulations are divided into separate ordinances, such that the Board may act separately on each.

Land Use ordinances require a written recommendation from the Planning Commission followed by a hearing at the Board. July 12 is that hearing date. No further hearing on Titles 20 and 21 would be required unless the Board makes substantive changes.

Chapters 7.90 and 7.95 do not require review by the Planning Commission, as they are not land use regulations. Staff presented these regulations to the Commission so they could understand the whole permitting process. The Commission did not comment specifically on these regulations other than to suggest that personal grows should not require any type of permit. Staff interprets that as suggesting that the Board not adopt Chapter 7.95. Chapter 7.100 was not

presented to the Commission. Chapters 7.90, 7.95, and 7.100 require a second reading.

The ordinances/actions are being presented in two parts:

- 1) July 12, 2016:
 - a. Negative Declaration. Evaluates effects of the proposed medical marijuana regulations.
 - b. Ordinance amending Title 21.
 - c. Ordinance amending Title 20 (Part 1 of the Monterey County Coastal Implementation Plan).
 - d. Ordinance adding Chapter 7.90 (Cannabis Business Permit - General). Regulations requiring an annual permit for commercial medical cannabis activities.
 - e. Ordinance adding Chapter 7.95 (Personal Medical Cannabis Permit). Regulations requiring annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use.
 - f. Ordinance adding Chapter 7.100 (Cannabis Tax). Establishing a County general tax on commercial cannabis businesses in the unincorporated area of Monterey County as of January 1, 2017.
- 2) July 19, 2016:
 - a. Ordinance adding Chapter 7.90 (Cannabis Business Permit - General)
 - b. Ordinance adding Chapter 7.95 (Cannabis Business Permit - Personal Use)
 - c. Ordinance adding Chapter 7.100 (Cannabis Tax)
 - d. Resolution calling for election of a ballot measure for a cannabis tax

On June 22, 2016, the Monterey County Planning Commission considered the commercial cannabis ordinances. At the hearing, the Commission stated that it could not recommend adopting the ordinances as drafted and provided staff with a list of ideas for revisions for the Board of Supervisors to consider prior to adoption. Staff was directed to prepare a resolution stating that the Planning Commission was recommending not adopting the ordinances as drafted, with the inclusion of their list of ideas for revision to consider. On July 29, 2016, staff returned to the Planning Commission with the drafted resolution for confirmation that each idea was correctly memorialized in the resolution. At the hearing, the Planning Commission provided a few minor edits to the list of ideas, and authorized staff to bring the resolution forward to the Board.

The Planning Commission had 20 ideas for revisions to consider prior to adoption of the ordinances. An example of some of these ideas are as follows:

- Delete proposed Chapter 7.95 in its entirety. Any requirement for additional county permits to cultivate medical marijuana for personal use should be removed because it is not consistent with the intent of the Compassionate Use Act and will create additional burden for seriously ill residents coping and treating their illness.
- The draft regulations should be simplified and not create a new permitting system, but rather use existing permit processes.
- The draft ordinances should be revised to allow anyone located in an agricultural zoning district to apply for permits to cultivate medical marijuana (indoor or outdoor, new or existing structure). This includes farmland, grazing and conservation zones (F, PG, RG, AP, CAP, WSC). Consideration of these permits should provide outcome-based requirements specific to the cannabis industry such as setbacks from sensitive receptors, security plan requirements, and

other similar regulations.

- Policy statement that medical marijuana is an agricultural product; however, it the use not considered Routine and On-Going Agriculture that is exempted from certain policies within the 2010 General Plan.
- Compassion for qualified patients is governing principle and priority for any regulation implementing the Compassionate Use Act.
- The approach to regulation should be fair, equal and even-handed and provide opportunities for all. The regulations should not be unfair and should not provide an unfair and unbalanced benefit for owners of certain greenhouses and industrial spaces. The regulations must be revised to increase equality and make considerations for those who had previously established and been legally operating cannabis business without significant violations or issues.

For detail of the Planning Commission's decision to not recommend that the Board adopt the medical marijuana ordinances, and ideas for revisions to consider prior to adoption see Attachment B - Planning Commission Resolution No. 16-015.

The Planning Commission expressed that they would have liked more time to consider this matter. They took this action in order to preserve the ability of the Board of Supervisors to consider a cannabis-related tax measure, which must be submitted via resolution to the Elections Department by August 12, 2016 for the measure to be on the November 2016 ballot. The last regular meeting of the Board

of Supervisors prior to August 12, 2016 is July 26, 2016. As such, Board action on the ordinances must take place in July of 2016.

DISCUSSION:

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

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 implication to the County of Monterey.

FINANCING:

Funding for staff time associated with drafting these regulations is included in each Departments FY15-16 and FY 16-17 adopted Budgets. On May 5, 2016 the County entered into an agreement with Hinderliter, de Llamas & Associates (HdL) in the amount of \$64,000 to provide their subject matter expertise and technical support in developing medical marijuana regulations, associated fees, and a potential tax ballot measure. This agreement was funded out of the Economic Development Department Fund 001-1070-8221-DOE001.

Adoption and implementation of these regulations is anticipated to impact services. Based on information received from the various departments that would be involved, staffing costs for a successful implementation of this program (permit processing, enforcement, etc) has been estimated to be about \$3.5 million per year. Estimated revenue from permit fees, using the current fee schedule, is about \$650,000 per year.

A total needs assessment for development of permit fees is underway. That final outcome depends on the scope of the final regulations that are adopted. Once the needs have been identified, staff will return to the Board with fee articles that address permit fees to implement the ordinance.

Some enforcement costs can be recovered through citations or litigation. However, that is typically only a fraction of the actual cost to perform all of the enforcement duties. The ad hoc committee requested staff to pursue a tax measure that could provide funding necessary to implement such a program. The ad hoc committee recommends that implementation of the ordinance be tied to successful passage and implementation of a tax measure on the November 2016 ballot to assure that the

County is not impacted by this action. As written, the tax measure is estimated to bring in at least \$30 million per year.

Prepared by: Jacqueline R. Onciano, Planning Services Manager, ext. 5193

Approved by: Carl P. Holm, RMA Director, ext. 5103

Attachments:

Attachment A Discussion

Attachment B Planning Commission Resolution No. 16-015

Attachment C Coastal Commission Letter dated: June 20, 2016

Attachment D Negative Declaration

Attachment E - 1 Draft Inland Ordinance (Clean version) amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis (Marijuana) activities in the inland unincorporated area of Monterey County

Attachment E-2 Draft Inland Ordinance (Redline version) amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis (marijuana) activities in the inland unincorporated area of Monterey County

Attachment F Draft Resolution of intent to adopt an ordinance amending Part 1 of the Monterey County Coastal Implementation Plan (Title 20, coastal zoning) to regulate commercial medical cannabis (marijuana) activities, with:

- Exhibit 1-Draft Ordinance- Redline Version

Attachment G Ordinance adding Chapter 7.90-Annual Commercial Medical Cannabis (Marijuana) Permit

Attachment H Ordinance adding Chapter 7.95- Annual Personal Medical Cannabis (Marijuana) Permit for Personal Cultivation/Use

Attachment I Ordinance adding Chapter 7.100- Impose general tax on commercial

cannabis (marijuana) business for unincorporated County of Monterey
Attachment J Medical Marijuana Regulations and Safety Act
Attachment K Federal Enforcement Priorities Memorandum
Attachment L Correspondence

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 Pharmaceuticals 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; Steve Craig; Erin McKenna; Cheryl Bryant Bruce; Charles Rowley; Alexis Garcia; Planning File REF150048