

**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No. 16-015

REF150048/Medical Marijuana Ordinances

Resolution of the Monterey County Planning Commission recommending that the Monterey County Board of Supervisors not adopt the ordinances establishing regulations for medical cannabis activities as currently drafted. Those ordinances include:

- a) 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;
- b) 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 activities in the coastal zone of unincorporated Monterey County as drafted; and
- c) An ordinance adding Chapters 7.90 and 7.95 to the Monterey County Code to require an annual commercial medical cannabis permit for commercial medical cannabis activities and require an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use.
(Countywide)

The proposed amendments to the Monterey County Code creating regulations for medical cannabis activities in the unincorporated areas of Monterey County came before the Monterey County Planning Commission at a duly noticed public hearing on June 22, 2016 and June 29, 2016. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors:

I. RECITALS

1. The federal 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 Substance Act.

2. The federal government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement strong and effective regulatory and enforcement systems that will address the threat that medical cannabis activity could pose to public safety, public health, and other law enforcement interests.
3. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing cannabis.
4. 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.
5. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.
6. On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 to prohibit the collective or cooperative cultivation of medical marijuana and medical marijuana dispensaries within the unincorporated area of Monterey County, with limited exemptions, pending the County’s study and consideration of regulations. The County has been studying and considering draft regulations for medical cannabis activities since the adoption of this Interim Ordinance.
7. On July 28, 2015, the Board of Supervisors adopted Interim Ordinance No. 5256 to extend Interim Ordinance No. 5254 by 10 months and 15 days.
8. On February 26, 2016, the Board of Supervisors adopted Interim Ordinance No. 5265 to amend Interim Ordinance No. 5254 to expand the exemptions and to extend Interim Ordinance No. 5254, as amended, until and through February 26, 2017. Interim Ordinance No. 5265 is in effect until February 26, 2017, unless the Board by ordinance terminates it earlier.
9. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*, the “MMRSA”). The MMRSA creates a state licensing program for commercial medical cannabis activities. The MMRSA allows counties and cities to maintain local regulatory authority over medical cannabis. The state

will not issue a state license without first receiving authorization by the applicable local jurisdiction.

10. Staff, working with an ad hoc committee of the Board of Supervisors, drafted ordinances regulating medical cannabis activities with the intent to accommodate the needs of seriously ill Californians and protect the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County and to comply with state law and federal guidelines.
11. On February 9, 2016, preliminary draft ordinances were provided to the Board of Supervisors with a status report on the progress of medical cannabis regulations.
12. On February 16, 2016 in Salinas, March 7, 2016 in Bradley, and March 17, 2016 again in Salinas, staff conducted public meetings to gather public feedback on comments on the draft ordinances.
13. On March 30, 2016, the Planning Commission conducted a public workshop to consider the draft ordinances and provide direction to staff.
14. After considering feedback from the public and the Planning Commission, staff prepared updated draft ordinances. The updated draft ordinances include:
 - a. An ordinance amending Title 21 of the Monterey County Code;
 - b. An ordinance amending Title 20, the Coastal Implementation Plan Part 1 of the Monterey County certified Local Coastal Program; and
 - c. An ordinance adding Chapters 7.90 (Commercial Medical Cannabis Permits) and 7.95 (Personal Medical Cannabis Permits) to the Monterey County Code.
15. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to medical cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.
16. The ordinances are intended to establish criteria for issuing local permits pursuant to the MMRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.
17. State law requires the Planning Commission to hold a noticed public hearing on proposed amendments to zoning ordinances and to make a written recommendation to the Board of Supervisors.
18. For the ordinance amending the Coastal Implementation Plan, pursuant to the Coastal Act, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: the County's Planning Commission hold a noticed public hearing and make a recommendation to the Board of Supervisors; the Board of Supervisors hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; the Board of Supervisors take subsequent final action on the ordinance after the Coastal Commission

acts; and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending Part 1 of the Coastal Implementation Plan will not go into effect until after certification by the Coastal Commission and subsequent formal adoption by the Board of Supervisors at a duly noticed public hearing, and it will not become operative until the Coastal Commission's certification is final and effective.

19. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.
20. Implementation of new regulations is anticipated to impact County services, which may necessitate the need for additional County staff. In addition, if medical marijuana regulations are adopted, large upfront costs that will impact the General Fund are anticipated. In order to ensure adequate financial resources are available to support County services and to oversee and enforce the new medical cannabis regulations, none of the ordinances regulating medical cannabis activities will become operative unless the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code.
21. On June 22, 2016, the Monterey County Planning Commission held a duly noticed public hearing to consider the proposed amendments to Title 20 (coastal zoning) and Title 21(non-coastal zoning) of the Monterey County as well as the proposed ordinance amending Title 7 of the Monterey County Code. After considering the evidence in the record and hearing testimony, the Planning Commission adopted a resolution of intent to recommend denial of the ordinance as drafted and continued the public hearing to June 29, 2016 with direction to staff to prepare a revised resolution for consideration. At least 10 days before the June 22, 2016 hearing date, the hearing before the Planning Commission was duly noticed, including publication of notice in the Californian.
22. An Initial Study/proposed Negative Declaration on the proposed ordinances was prepared and circulated to the public from May 20, 2016 through June 21, 2016. The Negative Declaration reflects the County's independent judgment and analysis. The custodian of documents which constitute the record of proceedings upon which the decision is based is the County Resource Management Agency, 168 West Alisal Street, Salinas, California. Comments received on the Negative Declaration were provided to the Planning Commission at or in advance of the hearing on June 22, 2016. The Planning Commission made no recommendation on the Negative Declaration.

II. DECISION

NOW, THEREFORE, BE IT RESOLVED, based on the evidence in the record, that the Planning Commission hereby recommends that the Board of Supervisors not approve the ordinances as drafted and consider the following ideas for revisions to the ordinance prior to adoption:

1. Chapter 7.95 should be deleted from the proposed ordinance and any requirement for additional county permits to cultivate medical marijuana for personal use should be

removed. The requirement to obtain permission to cultivate medical marijuana for personal use is not consistent with the intent of the Compassionate Use Act and will create an additional burden for seriously ill residents coping with and treating their illness. In addition, permits for personal cultivation introduce concerns for privacy for those individuals.

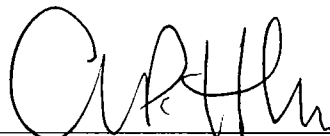
2. The draft regulations should be simplified at all possible points and existing systems for permitting should be used rather than creating new permitting systems. The current Use Permit process can serve as an existing permitting system with rigorous standards and requirements.
3. The draft ordinance should be revised to allow anyone located in an agricultural zoning district, inclusive of the Farmland ("F"), Permanent Grazing ("PG"), and Rural Grazing ("RG") zoning districts in the inland areas, and Coastal Agricultural Preserve ("CAP"), Agricultural Conservation ("AC"), and Watershed and Scenic Conservation ("WSC") zoning districts in the coastal areas, to apply for a Use Permit or Coastal Development Permit to cultivate medical marijuana (indoor or outdoor). Regulations for consideration of these Use Permits or Coastal Development Permits should provide outcome-based requirements specific to the cannabis industry such as setbacks from sensitive receptors, requirements to have a security plan approved by the Monterey County Sheriff's Office, and other similar regulations. Said regulatory compliance actions should be paid for by the applicant in the form of fees rather than supplemented by tax revenue. With this approach, provisions of the Use Permit process continue to apply including review of each application pursuant to the California Environmental Quality Act and compliance with existing regulations including such things as conversion of uncultivated lands to cultivated lands, watershed issues, environmental resource protections, consideration of cumulative impacts, and other relevant existing code requirements. Each permit would require review of its merits on a case-by-case basis.
4. The ordinances should be revised to clearly state that medical marijuana cultivation is not a routine and ongoing agricultural operation as that term is used in the 2010 General Plan such that these uses are not exempt from any policy or regulation.
5. The ordinances should be revised to clearly state the medical marijuana activities are not considered a coastal dependent use. This statement is made in response to the California Coastal Commission letter dated June 20, 2016.
6. Permit fees should be set so that any additional processing requirements introduced by the revised ordinance, are paid for by the applicant, at cost, similar to the fees set for processing an Environmental Impact Report (a deposit fee). Land use fee articles require a deposit account for Extraordinary Projects, and also require a separate deposit for condition compliance and mitigation monitoring.
7. Include in the permit fee, recovery of costs associated with GIS mapping of all Use Permits and Coastal Development Permits granted for medical marijuana activities. This information should be made readily available and accessible to law enforcement and code enforcement personnel. In addition, the information should be used in decision making to show current cumulative conditions when a permit is considered.

8. In light of changes recommended above, consider removing the requirement to provide on-site renewable energy generation from the draft ordinance. The existing Use Permit process can and does include review of impacts on greenhouse gases.
9. Consider allowing on-site Agricultural processing (small scale, low impact, non-volatile manufacturing of medical cannabis products) similar to uses allowed under the cottage industry regulations of the zoning code.
10. The ordinance should explain the process for revisions to the ordinances and project changes that may occur in response to State or Federal law with the intent to alert applicants to the potential for future changes in regulations.
11. Medical cannabis should be designated as an agricultural product. Remove any discussion suggesting the medical marijuana is not an agricultural product.
12. Medical cannabis activities are agricultural activities and the medical cannabis industry will add value and economic growth in this industry consistent with the policies contained in the Agricultural Element and the Economic Element of the 2010 General Plan.
13. Prohibition of cannabis activities does not work. The experiences of the past associated with prohibition of cannabis activities seems to provide sufficient evidence to move forward with a programmatic approach to a legalized cannabis industry, controlled by market forces as a means of removing the criminal element from this market. Sufficient permissions must be provided to minimize the existing and ongoing impacts of illegal cultivation and illegal criminal activity associated with marijuana. There are many people who desire to get permitted and operate legally within the confines of reasonable regulations.
14. Compassion for qualified patients is a governing principle and priority for any regulation implementing the Compassionate Use Act.
15. Encourage adaptive reuse of existing facilities (e.g. greenhouses) as well as construction of new facilities in all agricultural zones consistent with comment number three above. Limiting construction of new facilities could have the unintended consequences such as leaving existing structures abandoned and preventing the growth of technologies like hydroponic farming which could provide agricultural opportunity in areas that may not otherwise be well suited for agriculture.
16. The ordinance should be revised to clarify what is meant by allowing multiple uses/permits per parcel.
17. Consider the ability to remove or relax background checks for all employees considering limitations in State law. Individuals with previous criminal backgrounds should be encouraged to be reintegrated in society and should not be excluded from obtaining certain forms of employment without valid specific reasoning;

18. The ordinance should be revised to maintain flexibility in addressing appropriate security provisions and other requirements on a case-by-case basis rather than trying to apply a one-size-fits-all approach that may not be appropriate in every case. Require a Security Plan as part of the application that addresses site specific conditions that is reviewed as part of the Permit process.
19. The approach to regulation must 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. Those who had been operating legally and without incident prior to the regulations as drafted could be forced underground or out of business altogether. The regulations must be revised to increase equality and make considerations for those who had previously established and been legally operating a cannabis business without significant violations or issues.
20. These are higher-level comments. There would be additional, more detailed, comments if the proposed ordinances are revised and remanded back to the Commission to work on.

PASSED AND ADOPTED this 29th day of June, 2016, upon motion of Commissioner Vandever, seconded by Commissioner Diehl, by the following vote:

AYES: Diehl, Hert, Padilla, Rochester, Vandever
NOES: Duflock, Getzelman
ABSENT: Ambriz, Mendez, Roberts
ABSTAIN: None

By: 
Carl P. Holm, Planning Commission Secretary