

Exhibit A

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Monterey County Planning Commission

Agenda Item No. 3

Legistar File Number: PC 17-080

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

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Introduced: 9/20/2017

Version: 1

Current Status: Agenda Ready

Matter Type: Planning Item

REF150048 - CANNABIS ORDINANCES UPDATE WORKSHOP

Public workshop to:

- a. Receive a presentation regarding changes in state law for licensing commercial cannabis activities;
- b. Receive a presentation of draft ordinances amending Monterey County code including: 1) the inland Zoning Ordinance (Title 21); 2) the coastal Zoning Ordinance (Title 20); the Commercial Medical Cannabis Business Licenses regulations (Chapter 7.90); 3) the Business License requirements (Chapter 7.02); and a text amendment to the North County Land Use Plan to update regulations for permitting commercial cannabis activities including both medicinal and adult-use/recreational cannabis activities and other changes based on state law; and
- c. Provide direction to staff.

Location: County-wide

Proposed CEQA action: Workshop is Statutorily Exempt per Section 15262

RECOMMENDATION:

It is recommended that the Planning Commission:

- a. Receive a presentation regarding changes in state law pertaining to cannabis licensing; and
- b. Provide direction to staff on draft land use regulations amending the ordinances governing commercial cannabis activities in the unincorporated areas of Monterey County.

SUMMARY:

Senate Bill (SB) 94 consolidated medical and adult-use cannabis regulatory frameworks established under the Medical Cannabis and Regulatory Safety Act (MCRSA) and Proposition 64, the Adult Use of Marijuana Act (AUMA), into one single regulatory system for commercial cannabis activity - the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (MAUCRSA). The County's current cannabis regulations were created and adopted based on MCRSA, which was the State law in place at the time. MCRSA, and consequently the County's ordinances, were limited to medical cannabis activities and do not address adult use/recreational cannabis activities. With the changes resulting from Proposition 64 and subsequently SB 94, the County's cannabis regulations no longer align with the State law including, most notably, the permitting/licensing of adult-use cannabis activities, and new or redefined state cannabis license types.

As a result of changes in the state law, staff, working with the Board Ad Hoc Committee on Cannabis, drafted ordinances that would amend the County's cannabis regulations to regulate both medicinal cannabis activities as well as recreational cannabis activities and to better align with the current state

law. Specific regulations recommended for updating include: The inland Zoning Ordinance (Title 21); the coastal Zoning Ordinance (Title 20), Chapter 7.90 (Commercial Medical Cannabis Permits); Chapter 7.02 (Business Licenses); and the North County Land Use Plan.

On January 1, 2018, a State licensing program for commercial cannabis activities will be in effect. In order to maintain local control over cannabis licensing, the County must adopt affirmative local regulations for adult use and medicinal use cannabis activities before State licensing occurs. Procedurally under MAUCRSA, the County must provide the state with copies of local regulations. Once notified by the state of an application for a state cannabis license, the County will have 60 days to inform the State Bureau of an applicant's compliance or non-compliance with local regulations and if they are currently in "Good Standing". The Resource Management Agency released a set of three memos outlining what is required of applicants through the permit process and what it means to be considered in "Good Standing" with the County (Exhibit H). 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 anticipates bringing ordinances to the Board of Supervisors before the end of the year (2017).

Initially, only technical non policy-related changes are proposed. Other, more complicated policy decisions such as those relating to outdoor cultivation, dispensary/retailer setbacks, zoning district limitations, 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 draft 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 (only a licensed distributor can transport cannabis).

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 license 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 providing non-substantive changes; 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. Staff feels that this is a good location for this type of activity and Coastal staff agreed to this initial simple change. A General Development Plan is required in order to permit uses at this location. In addition, the Moss Landing Community Plan update will address this issue.

Proposed Zoning Code and Land Use Plan (LUP) amendments (Title 20, NCLUP, Title 21) require a recommendation by the Planning Commission to the Board of Supervisors. Amendments to Title 7 do not require Planning Commission action, but staff is presenting them with the land use action in order to present the whole picture to the Planning Commission. Staff will return for a public hearing to consider:

- Resolution of Intent for the Coastal Commission to approve amendments to Title 20 Ordinance and North County Land Use Plan update.
- Resolution(s) recommending Board approval of amendments to Title 21 and Title 20.

DISCUSSION:

Detailed discussion is provided in **Exhibit 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

The Board of Supervisors has appointed an ad hoc committee to consider issues and provide direction to staff on cannabis matters. The Committee consists of Supervisors Adams and Philips.

FINANCING:

Funding for staff time associated with drafting these regulations is included in the FY17-18 Adopted Budget for RMA and County Counsel.

Prepared by: Craig W. Spencer, Senior Planner, x5233
Reviewed by: Brandon Swanson, RMA Planning Services Manager
Approved by: Carl P. Holm, AICP, RMA-Director 

Attachments:

- Exhibit A - Project Discussion
- Exhibit B - Draft Ordinance amending Chapter 21.67, Title 21, Inland (redline)
- Exhibit C - Draft Ordinance amending Chapter 20.67, Title 20, Coastal (redline)
- Exhibit D - Draft text amendments to the North County Land Use Plan (redline)
- Exhibit E - Draft Ordinance amending Chapter 7.90 (redline)
- Exhibit F - Draft Ordinance amending Chapter 7.02 (redline)
- Exhibit G - RMA Cannabis Memos on Process and Good Standing

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; Brandon Swanson, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch; 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.

EXHIBIT A

DISCUSSION

(Draft 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:

- Provides 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 had adopted a Resolution of Intent to adopt coastal zoning regulations (Title 20) however, the regulations have not been certified by the California Coastal Commission and are not in 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 adult-use cannabis activities prior to January 1, 2018 when the State cannabis licensing programs becomes operative. The options for accomplishing the desired included:

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*.
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.
3. Prohibit adult-use cannabis activities in Monterey County (long-term); or
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 necessitated (after January 1, 2018);
3. Revisions requiring 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 (only a licensed distributor can transport cannabis).

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 license 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 providing non-substantive changes; 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, these topics following 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.

Next Steps

Staff is seeking feedback and direction from the Planning Commission regarding the content of the draft land use ordinances and relevant policy decisions. It is the intent of staff to return to the Planning Commission in October for a recommendation to the Board of Supervisors on the draft ordinances. Following the Planning Commission recommendation, staff will present the ordinances to the Board of Supervisors in November and/or December for adoption. The coastal regulations would then again be sent to the Coastal Commission for certification following Board action.

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