



# Monterey County Planning Commission

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## Agenda Item No. 3

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### REF150048 - CANNABIS REGULATIONS - SETBACKS

Public hearing to consider coastal and non-coastal zoning ordinances amending setback requirements between:

- a. Commercial cannabis retailers (dispensaries); and
- b. All commercial cannabis activities and schools, public parks, playgrounds, day care centers, and youth centers.

**Project Location:** County Wide

**Proposed CEQA Action:** Statutorily Exempt pursuant to Business and Professions Code Section 26055(h), and Section 15282 of the CEQA Guidelines.

#### PROJECT INFORMATION:

**Planning File Number:** REF150048 (Cannabis Regulations - Setbacks)

**Plan Area:** County-wide

#### RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution (**Exhibit A**) recommending that the Board of Supervisors:

- a. Find the ordinances statutorily exempt from the California Environmental Quality Act pursuant to Business and Professions Code Section 26055(h) and Section 15282 of the CEQA Guidelines;
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to:
  - 1) Amend Section 21.64.040.B.3 of the Monterey County Code deleting the requirement for a 1,500-foot setback between commercial cannabis retailers and instead requiring a finding of *public convenience or necessity* for all commercial cannabis retailer Use Permits; and
  - 2) Amend definitions, regulations and required findings for setbacks contained in Chapter 21.67 of the Monterey County Code to remove the setback from drug recovery facilities and add a 600-foot setback from day care centers and youth centers consistent with state law for all types of commercial cannabis activities, and for retailer facilities, to remove the 600-foot setback from public parks (e.g., large open spaces such as state parks, regional parks, county parks), but add a 600-foot setback from all playgrounds (**Attachment 1 to Exhibit A**); and
- c. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to:
  - 1) Amend Section 20.64.040.B.3 of the Monterey County Code deleting the

requirement for a 1,500-foot setback between commercial cannabis retailers and instead requiring a finding of *public convenience or necessity* for all commercial cannabis retailer Use Permits; and

- 2) Amend definitions, regulations and required findings for setbacks contained in Chapter 20.67 of the Monterey County Code to remove the setback from drug recovery facilities and add a 600-foot setback from day care centers and youth centers consistent with state law for all types of commercial cannabis activities, and for retailer facilities, to remove the 600-foot setback from public parks (e.g., large open spaces such as state parks, regional parks, county parks), but add a 600-foot setback from all playgrounds (**Attachment 2 to Exhibit A**).

#### SUMMARY:

At the direction of the Planning Commission and Board of Supervisors, staff has prepared ordinances that amend setback requirements applicable to commercial cannabis activities in the unincorporated areas of Monterey County. Staff anticipates returning to the Board with the Commission's recommendation in March, 2018. However, this matter is much more complicated than simply amending setback requirements. As such, staff has presented other options below that the Commission may consider that would require staff to return with revised ordinances.

The County's current regulations, both inland and coastal, require that commercial cannabis retailers be located at least 1,500 feet from another cannabis retailer and be setback at least 600 feet from a school, public park, or drug recovery facility. These setbacks were established to distribute the density of retailers and in anticipation of what staff believed at the time would be in the state's regulations. However, the setbacks have created challenges processing applications and are not aligned with recent changes to state law.

State law requires a setback of 600 feet between commercial cannabis operations and schools, day care centers, and youth centers. Definitions for each of these uses are provided in state law. There is no required setback between cannabis retailers or between retailers and drug recovery facilities in state law, but there is a density component in state regulations. The regulations require the state licensing agencies to determine if there is an "excessive concentration" of retailers in a census tract based on a ratio of retailers to population, similar to the process for obtaining a liquor license from the Bureau of Alcohol, Tobacco, and Firearms (ABC).

In addressing these setback issues, County staff has considered and analyzed several options for promoting healthy business competition, while still being sensitive to health, safety, and social issues that may arise from cannabis uses. Analysis included discussions with representatives from State Parks, Monterey County Public Health, Monterey County Sheriff's Office, and research of relevant crime and health data from other jurisdictions that currently permit cannabis business (See **Exhibit D** for more information on research).

#### Setback from Public Parks:

State Parks staff expressed concern about agriculture and development (not necessarily cannabis specific) near park lands for various environmental reasons, including the need for fire clearance/breaks, erosion and runoff, use of pesticides and fertilizers, and other agricultural

and development-related impacts. State Parks staff conveyed that they are not concerned with retailer uses within existing commercial areas near state parks. However, Monterey County staff is concerned with retailers near local parks in communities (e.g. playgrounds). Therefore, County staff has concluded that the setback issue is more about the definition of parks than the distance component.

Setbacks Between Dispensaries:

Monterey County Public Health officials remain concerned about the potential health effects from a high concentration cannabis retailers. Concerns include exposure to youth through advertisement and visible store fronts, and the possibility of disproportionate impacts of cannabis use within disadvantaged communities. Health suggested the possibility of monitoring and evaluating cannabis dispensary impacts before changing the setback or density requirements. Other research conducted by staff revealed little health or safety basis for implementing special setbacks or reduced density requirements for commercial cannabis retailers beyond those already imposed by the State. Also of note, concentrations could ultimately be limited by free market forces like any other legitimate business. As such, given the above discussions and research, staff recommends review and consideration of retailer concentrations through the Use Permit process. This review can include input from the Sheriff's Office and Health Department, and it will inform the Planning Commission of the concentration of retailer operations already within the census tract.

Staff recommends amending the current required setbacks. As drafted, the proposed ordinances would:

- Delete the setback required between retailers, and instead establish a required finding of *public convenience or necessity* for all retailer Use Permits;
- Replace "public parks" with "playgrounds" for retailer setback requirements;
  - o "Public parks" is defined as "an area created, established, designated, or maintained by a special district, a County, the State, or the Federal government for public play, recreation, or enjoyment or for the protection of natural resources and features at the site."
  - o "Playground" will be defined as "any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks." (Health & Safety Code Section 11353.1(e)(1)).
- Update setbacks for all commercial cannabis activities consistent with state law including deleting the setback from drug recovery facilities and adding setbacks from day care centers and youth centers.

These proposed revisions would align the County's requirements with current state law and avoid impacts to youth oriented uses and facilities. A summary of the proposed setbacks in the draft ordinances are as follows:

*Retailers (i.e. dispensaries)* - 600-foot from all of the following:

1. A school providing instruction in kindergarten or any grades 1 through 12

2. Day care centers
3. Youth Centers
4. Playgrounds

*All other cannabis activities* - 600 feet from all of the following:

1. A school providing instruction in kindergarten or any grades 1 through 12
2. Day care centers
3. Youth Centers
4. Public Parks

All setbacks apply only to operations in existence at the time the permit is being considered and are measured from property line to property line.

#### DISCUSSION:

Pursuant to Government Code Sections 65854 and 65855, the Planning Commission must hold a public hearing and make a written recommendation to the Board of Supervisors concerning amendments to zoning ordinances. This project involves two zoning ordinances, one coastal and one inland. The Planning Commission is asked to consider the proposed amendments and make a written recommendation to the Board (Attachments 1 and 2 to the draft resolution, **Exhibit A**).

The proposed ordinances would remove the setback required between commercial cannabis retailers, and it would amend definitions and setback requirements from schools, public parks, playgrounds, drug recovery facilities, day care centers, and youth centers for all commercial cannabis activities. A new finding would also be added to the ordinance requiring a *public convenience or necessity* determination for all commercial cannabis retailer Use Permits.

#### **Setbacks between Retailers (Dispensaries)**

The State did not have regulations limiting the concentration of cannabis retail facilities when the County initially adopted its medical cannabis regulations. To provide limitations on the potential density of cannabis retailers, the County adopted regulations requiring a 1,500-foot setback between operations. In practice, there have been several occasions where dispensary uses are proposed within 1,500 feet of one another due to the limited areas zoned for commercial use, and limited availability of tenant space in these commercial zones. With updates to state law and the release of regulations by the State licensing agencies, new information and standards for retailer concentrations are now available.

Section 5019 of the Bureau of Cannabis Control's regulations establish an "excessive concentration" standard for licensing of commercial cannabis retailers, which is similar to the standards used for alcohol licensing. Concentrations would be determined by comparing the ratio of licenses to population within the census tract to the ratio of licenses to population within the County. If the ratio of retailers to population in the census tract exceeds the ratio of retailers to population within the whole County, there would be an excessive concentration of retailers in that census tract.

Staff researched health and safety information as a means of determining appropriate setback or density limits. Staff reviewed several studies from other jurisdictions (See **Exhibit D**), and consulted with the Monterey County Sheriff's Office and Monterey County Public Health. These findings are

summarized below:

*Criminal Activity:*

In most cases, studies have shown that due to security measures imposed on cannabis operations, dispensaries have the same or fewer number of crimes than uses such as banks, pharmacies, and liquor stores. There are no local County requirements for maximum density or setbacks from these other types of uses other than concentration ratios established by the State for liquor licenses. In the case of liquor licenses, the Board of Supervisors must make a finding of *public convenience or necessity* when a license would exceed the concentration ratios within the census tract.

In discussions with the representatives from the Monterey County Sheriff's Office, there have been two incidents of crime at an existing retail facility in Castroville. The first, an attempted robbery involving the use of a stolen vehicle to run through the building wall. The second, a gang-related shooting outside the dispensary. In the case of the attempted robbery, locked safes within the dispensary prevented significant loss of cash or product. In the case of the shooting, the incident occurred outside the dispensary due to the presence of security within the dispensary. To date, these are the only reported incidents at dispensaries in the County. While the incidents in Castroville do raise concerns, attempted robberies and gang-related shootings are not unique to dispensary uses. Robbery is often a crime of opportunity. Well secured facilities help to minimize opportunities for theft and conflict within the dispensary. Research conducted on this subject found, in the case of Los Angeles, that criminal activity rose in areas where medical cannabis dispensaries had been closed. In all, staff, including the Sheriff's Office, could not make a definitive tie between density or proximity of dispensaries and a potential increase in crime rates. Based on research (**Exhibit D**), there is little evidence to suggest that additional restrictions, beyond those imposed by the state for cannabis retailers, are warranted to deter criminal activity.

*Public Health:*

Research on health impacts of cannabis were also evaluated. Many of the potential health impacts appear to be more closely aligned with the general legalization of cannabis or associated with operational requirements of dispensaries, rather than the density or location of the dispensaries. Cannabis-related health concerns include preventing access to youth, outreach and education about potential health impacts for pregnant women, restrictions on the transport or possession of cannabis on federal properties (such as Fort Ord), and the consequences of drugged driving. The County's Health Department expressed concerns about disproportionate impacts to vulnerable populations due to overconcentration of cannabis retail facilities. Health has observed that alcohol and tobacco use, along with corresponding health impacts, are disproportionately high in disadvantaged communities. Health suggested monitoring and evaluating cannabis dispensary impacts before changing the setback or density requirements. In contrast to the Health concerns, some jurisdictions are adopting equity policies that provide a preference for cannabis operations within disadvantaged communities as a means of providing economic benefits to areas most impacted by the "War on Drugs."

In considering options for amending the setback required between dispensaries, if the setbacks were

removed, the potential number or concentration of retailers would default to the State's "excessive concentration" determination. The excessive concentration amounts would be based on population within the census tract. As is the case with alcohol licenses, there is still a path to obtaining state licenses should the proposed retailer exceed the concentration requirements. State regulations allow approval of cannabis retailer licenses in excess of the concentration ratios if: "denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for cannabis or cannabis products." The processes and exact requirements for the excessive concentration determination are still being developed by the state licensing agencies. Staff anticipates that the state will establish a process similar to ABC licensing for a determination of concentration, and if applicable, a *public convenience or necessity* process for retailers in excess of the permissible concentration limits. State licensing authorities conveyed to staff that this process is expected to be refined in 2018. State cannabis regulations currently do not have an exact process for cannabis concentration that can be addressed by the County prior to action on its Use Permits. That means an applicant would have to go through the County process without knowing if the State would allow it. To address this issue, as well as public health concerns, we recommend that retailer Use Permits include a finding of *public convenience or necessity* (Sections 21.64.040.C.6 and 20.64.040.C.6 of the proposed ordinances).

Other potential options for dispensary setbacks evaluated include:

1. Keep the established setback of 1,500 feet. This setback effectively limits the number of dispensaries allowed in the unincorporated area, but does not address existing permitting issues and market demands;
2. Establish a density requirement that could limit applications based on a number of retailers per acre ratio without setback from another retailer (e.g. one retailer per 10 acres of commercial center). If pursued, an appropriate alternative density would need to be established and regulations and procedures for verifying concentration ratios in review of local permits would need to be created. This would shift the burden of such determinations from the State to the County and require ongoing update and maintenance of County-wide retailer data and locations; or
3. Create an exception process and/or criteria. This approach would require a case-by-case determination for each application regarding whether an application meets the criteria to be granted an exception. A potential benefit of this option is that each application can be considered case-by-case based on facts relative to that case. The County retains control over when and where an exception would be granted. Exceptions could be applied to any standard, except land use designations. It does not need to be limited to setbacks. The ultimate density of retailers in any given area that might result from this type of exception process is difficult to predict.

Based on the information described above, staff recommends amendments that would delete setbacks required between retailers. Potential density of retailer operations and public health concerns would be addressed as part of the proposed *public convenience or necessity* finding for each Use Permit.

#### **Setbacks from schools, public parks, playgrounds, day care centers, and youth centers**

For all cannabis licenses types, state law provides: "*A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license*

*is issued, unless a licensing authority or a local jurisdiction specifies a different radius.”*  
(Business and Professions Code Section 26054(b)).

County cannabis regulations currently require a 600-foot setback between schools, public parks, and drug recovery facilities. “Public Park” is defined as *“an area created, established, designated, or maintained by a special district, a County, the State, or the Federal government for public play, recreation, or enjoyment or the protection of natural resources and features at the site.”* No definition of “school” or “drug recovery facility” is provided in the County Code; however, definitions of these uses can be found in state law.

To align with state law and incorporate feedback from State Parks personnel, staff has drafted ordinances that would amend the public park setback for cannabis retail operations, while maintaining the 600-foot setback from public parks for all other commercial cannabis activities. Rationale for this separation is explained below:

*Retailers:*

Staff recommends removing the “public park” setback requirement for retailer facilities and instead requiring a setback from a “playground” as defined in state law to be: “a park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.” The rationale for this revision is that the term “public parks” is too broad a term that includes areas of passive recreation or natural resource protection. Playgrounds are youth oriented facilities where children congregate on a regular basis and thus may be incompatible with commercial cannabis uses, as opposed to location of retailers in existing retail areas near larger passive use park boundaries. This amendment would be consistent with state law as the definition of “playground” comes directly from the statute defining “youth center” (Health and Safety Code Section 11353.1).

*All Other Cannabis Activities:*

Staff recommends updating the setback requirements for all commercial cannabis activities to mirror state law, including adding the definitions of schools, day care centers, and youth centers. Other than retailers, setbacks required from “public parks” for cultivation, manufacturing, and other commercial cannabis uses would remain. The rationale for this stems from conversation with State Parks representatives. Concerns raised by State Parks staff on this topic include the potential need for fire clearance/breaks, erosion and runoff, use of pesticides and fertilizers, and other agricultural and development-related impacts that might arise from operations near park lands. They recommended additional dialogue and analysis of the potential impacts before removing or amending the park setback requirements for cultivation, manufacturing, or other uses involving new development. The same concerns were not applicable to consideration of dispensaries in commercially zoned areas. For these reasons, the 600-foot setback from “public parks” is proposed to be remain to protect encroachment on protected natural resources.

### **California Environmental Quality Act (CEQA)**

Section 15282 of the CEQA Guidelines provides an exemption for projects that are specifically covered in the California Code. In the recent changes to state law concerning commercial cannabis operations, the state legislature provides a statutory exemption from CEQA for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permit that are themselves subject to CEQA review (Business and Professions Code Section 26055(h)). The County's draft ordinances require a Use Permit or Coastal Development Permit for all commercial cannabis activities, and the Use/Coastal Development Permits are individually subject to CEQA review. Therefore, these ordinances are statutorily exempt from CEQA review.

### **OTHER AGENCY INVOLVEMENT:**

The following agencies and departments have been involved in preparation of the draft ordinances:

- Resource Management Agency
- Health Department
- Sheriff's Office
- State Parks
- County Parks
- County Counsel's Office

### **FINANCING:**

Funding for staff time associated with drafting these amendments is included in adopted Department budgets for FY 2017-18.

Adoption and implementation of these amended regulations is not anticipated to significantly impact services beyond those previously considered in adopting the original commercial medical cannabis regulations in 2016. Removing the setback required between dispensaries could increase the number of dispensary permissible in the unincorporated area; however, application fees are established to offset processing costs on average.

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Reviewed by: Brandon Swanson, RMA-Planning Manager  
Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:

- Exhibit A - Draft Resolution
  - Attachment 1 - Draft ordinance amending Title 21 (clean version)
  - Attachment 2 - Draft ordinance amending Title 20 (clean version)
- Exhibit B - Draft ordinance amending Title 21 (redline version)
- Exhibit C - Draft ordinance amending Title 20 (redline version)
- Exhibit D - Research and publication references

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 Farmaceuticals 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; John Bridges; Hansen Reed; Planning File REF150048