

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

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## MEMORANDUM

**Date:** April 17, 2018

**To:** Cannabis Committee

**From:** Resource Management Agency

**Subject:** Cannabis Retailer Setbacks

**cc:** Interested Parties for Cannabis regulations

### **Title**

Provide direction to staff on ordinances amending required setbacks between commercial cannabis retailers (also known as dispensaries) in the Inland and Coastal areas.

### **Recommendation**

In order to address comments made at the Board of Supervisors hearing on March 20, 2018 and to make the finding less ambiguous, staff suggests amending the language presented to the Board on March 20<sup>th</sup> to maintain the 1,500 foot setback and establish criteria by which an exception to the setback may be granted. Staff is seeking direction from the Cannabis Committee with regard to the appropriate criteria. Following direction from the Committee, staff will prepare new ordinances for consideration.

### **Summary**

On March 20, 2018, the Board of Supervisors considered ordinances to amend the setbacks required for commercial cannabis activities. At the hearing, the Board separated the ordinances. It adopted ordinances that amend setback requirements between commercial cannabis activities and parks, playgrounds, child care centers, and youth centers. It also directed staff to return to the Cannabis Committee for further review of ordinances concerning setbacks between cannabis retailers. As presented at the Board on March 20<sup>th</sup>, the draft language (not adopted and now proposed as a separate ordinance) deleted the setback required between retailers, and instead established a required finding of *public convenience or necessity* for all retailer Use Permits/Coastal Development Permits. Comments at the Board hearing on the public convenience or necessity finding included a concern that the requirements were nebulous and concerns were raised relative to the potential public health impacts that may result from concentrated cannabis dispensaries.

Many factors have been considered in staff's recommendation for the cannabis dispensary setback. Factors considered include review of health and safety information, review of state law, and more

recently, staff has taken into account comments from the March 20<sup>th</sup> Board hearing and from Monterey County Public Health staff.

This report provides details on the factors considered in ordinance development and provides options for consideration by the Committee that may make the setback requirements less ambiguous and/or preserve regulations to avoid public health impacts that may result from higher densities of cannabis retailers.

## **Background**

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. The 1,500 foot setback has effectively limited the potential density of cannabis dispensaries in Monterey County but has also led to issues in implementing the requirement through the permitting process. On three different occasions, applications have been filed nearly simultaneously for a Use Permit to allow cannabis dispensaries, located within 1,500 feet from the other. Specific examples include two applications in Carmel Rancho Shopping Center, two applications in the Pajaro area, and two applications in Prunedale off Reese Circle. Staff and the Planning Commission have developed a first come-first served policy with respect to these applications, which puts the applicants in a race to submit a complete application.

Having identified the permitting issues, and at the direction of the Planning Commission and Board of Supervisors, County staff has considered and analyzed several options amending the dispensary setback requirement with the intent to promote healthy business competition and remain sensitive to health, safety, and social issues that may arise from cannabis uses.

## **State Law and Regulations**

There are no required setbacks between cannabis dispensaries in state law. Rather, the state requires the Bureau of Cannabis Control to consider excessive concentrations when issuing a State license for retail facilities.

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. The significance of the Bureau's consideration of concentrations in the licensing process is unknown at this time.

For the County's purposes, mirroring the State licensing regulations for excessive concentrations is problematic, at least initially. The industry is still getting established and the number of dispensaries in Monterey County continues to rise as permits are approved by both the County and cities which lie within the County. Census tracts in unincorporated Monterey County generally have a small population. In most cases, one dispensary would be considered in excess of the concentration ratios, because there are relatively few dispensaries currently permitted county wide, and there are relatively small populations within many of the census tracts.

As is the case with alcohol licenses, even if a license were determined to be in excess of the allowable concentrations, there is still a path to obtaining state licenses. 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 Bureau. Staff anticipates that the Bureau 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. The Bureau conveyed to staff that this process is expected 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/Coastal Development Permits. That means an applicant would have to go through the County process without knowing if the State would allow it. In recommending the *public convenience or necessity* finding, staff was anticipating that cannabis dispensary licensing requirements would mirror alcohol licensing requirements and if this assumption were to prove accurate, a review of public convenience or necessity in each case would proactively address the anticipated requirement.

### **Health and Safety**

Staff researched health and safety information as a means of determining appropriate setback or density limits. Staff reviewed several studies from other jurisdictions, 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, 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."

Given the concerns raised by Public Health regarding potential impacts of cannabis dispensaries, staff recommended that the Use Permit/Coastal Development Permit include analysis from the Public Health Department. The analysis could be required for all cannabis dispensary applications or only for applications that are determined to be in excess of the allowable concentrations. This report is primarily informational so that the public and Planning Commission are informed of the potential public health impacts associated with consideration of a dispensary application. The report does not provide specific criteria that is conducive to a pass/fail exception criteria.

*Staff is seeking direction from the Committee with regard to the nebulous requirements to "consider a Public Health impact report" as part of the dispensary review process.*

## **Options**

As presented at the Board on March 20, 2018, the ordinance deleted the setback required between retailers, and instead established a required finding of *public convenience or necessity* for all retailer Use Permits. The draft finding that was presented is quoted below:

*"Retail facilities shall serve a public convenience or necessity. In determining if a retail facility will serve a public convenience or necessity, the Appropriate Authority shall:*

- a. Consider a report from the Monterey County Health Department concerning the proposed retail facility's impacts to long-term public health and disadvantaged communities; and*
- b. Find that one or more of the following criteria are met:*
  - i. The retail facility will not result in an excessive concentration within in the census tract where the retail facility would be located. For the purposes of this Section, an excessive concentration exists when the ratio of retail facilities to population within the census tract in which the applicant premises is located exceeds the ratio of retail facilities to the population in Monterey County;*
  - ii. The retail facility will enhance the economic viability of the area;*
  - iii. The retail facility will serve a portion of the commercial cannabis market not served by other retail facilities in the area; or*

iv. *The Monterey County Sheriff's Office and the Monterey County Health Department have no objection to the retail facility."*

Other options evaluated during staff review of the proposed setback amendments included:

1. Keeping 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. **Recommended approach:** 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.

### **Possible Criteria for Granting an Exception**

In order to address comments made at the Board of Supervisors hearing on March 20, 2018 and to make the finding less ambiguous, staff suggests a hybrid of the draft language presented to the Board on March 20<sup>th</sup>, and option 3 above (create an exception process and/or criteria). With this approach, staff would draft new ordinances (Inland and Coastal) with language that maintains a 1,500 foot setback between dispensaries and creates a process and criteria for granting an exception to the 1,500 foot setback provided certain criteria are met. There are benefits and drawbacks to establishing specific criteria. Options and issues with some specific criteria are discussed below.

1. Excessive Concentration:
  - a. Criteria for concentrations could be made more specific with a not to exceed number or ratio of dispensaries within an area or census tract. For instance, the criteria could allow one dispensary per census tract or more if the dispensary would not result in an excessive concentration. Another example would be to allow 1 dispensary for every 8 acres of contiguous commercial space. The difficulty with these criteria are:
    - i. There are 95 census tracts in Monterey County. Many of these do not have commercially zoned properties that could support a dispensary;
    - ii. This level of specificity would likely not address all existing and potential future conflicts between dispensaries and competition permits would remain; and
    - iii. The boundaries of the areas in which the concentrations apply can be difficult to determine.
2. Health Impacts:
  - a. Criteria for health impacts could be made more specific by not allowing dispensaries in excess of established concentrations within disadvantaged communities such as Pajaro, Chular, and similar areas.

- i. This level of specificity would likely not address all existing and potential future conflicts between dispensaries and competition permits would remain; and
  - ii. This approach would not allow consideration of other relevant factors.
- 3. Locational factors:
  - a. This criteria could include specifics such as location within a regional serving shopping center having at least 8 acres of contiguous commercial space; location more than 600 feet from a residential zone; and/or location in an area that would serve a convenience to a population not otherwise served without the granting of an exception.
    - i. This level of specificity would likely not address all existing and potential future conflicts between dispensaries and competition permits would remain.

Difficulty with determining the specific criteria lies with finding a reasonable and uniform standard. Staff is seeking direction from the Cannabis Committee and the public regard to the approach, the criteria, and any other direction that the Committee may have on the dispensary setback requirements.

### **Next Steps**

If so directed, staff will prepare new draft ordinances (Inland and Coastal) amending the setback requirements between commercial cannabis dispensaries and return to the Cannabis Committee for a review of the revised language. Depending on the degree to which the language is amended, staff anticipates revised language could be provided at the June 2018 Cannabis Committee meeting.

It should be noted that pursuant to Government Code Section 65857, substantive changes to the ordinance are required to be referred back to the Planning Commission for a review and recommendation to the Board of Supervisors. The proposed changes would be substantive. If applicable, following referral of the modifications to the Planning Commission and a new recommendation by the Planning Commission, the ordinances would return to the Board of Supervisors for adoption.

Amendments applicable in the coastal zone require that the Board adopt a resolution of intent to adopt the ordinances, transmittal of the Resolution of Intent to the Coastal Commission for certification and subsequent adoption of the ordinance by the Board of Supervisors. The Coastal Act limits the number of Local Coastal Plan (LCP) amendments to three per year. The Board has already adopted a resolution of intent to modify the setbacks required between commercial cannabis activities and schools, playgrounds, child care centers, and youth centers. If and when the Board adopts a Resolution of Intent to amend the dispensary setbacks, the amendment would represent the second LCP amendment for Monterey County this year. One more application would remain.