



Monterey County

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Board Report

Legistar File Number: ORD 18-013

November 06, 2018

Introduced: 10/22/2018

Current Status: Scheduled PM

Version: 1

Matter Type: Ordinance

REF150048 - Inland and REF160042 - Coastal Commercial Cannabis (Marijuana) Permit Requirements and Dispensary Setbacks

Public hearing to consider:

- a. Adoption of an ordinance amending Title 21 (non-coastal zoning ordinance) to:
 1. Change commercial cannabis activities from a conditional use allowed subject to a Use Permit in each case within specified zoning districts, to a principal use allowed subject to an Administrative Permit in each case within the same specified zoning districts; and
 2. Establish required permits and criteria for retail facility applications that do not comply with the 1,500-foot setback from another approved retail facility.
- b. Adoption of a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to:
 1. Change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit in each case within specified zoning districts, to a principal use allowed subject to a Coastal Administrative Permit in each case within the same specified zoning districts; and
 2. Establish required permits and criteria for retail facility applications that do not comply with the 1,500-foot setback from another approved retail facility.
- c. Adoption of a Resolution clarifying permit fees where applicants have paid for a Use Permit/Coastal Development Permit and the type of permit is amended.

Location: County-wide

Proposed CEQA action: Statutorily exempt pursuant to Business and Professions Code section 26055(h) (CEQA exemption for the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review).

RECOMMENDATION:

The Planning Commission recommends that the Board of Supervisors:

- a. Find the project is the adoption of amendments to local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA pursuant to Business and Professions Code section 26055(h).
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to:
 1. Change commercial cannabis activities from a conditional use allowed subject to a Use Permit in each case within specified zoning districts, to a principal use allowed subject to an Administrative Permit in each case within the same specified zoning districts; and
 2. Require a Use Permit for a proposed retail facility that does not comply with the 1,500-foot setback from another approved retail facility including establishment of findings for consideration of such permits. (**Attachment B**).

- c. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance):
 1. Change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit in each case within specified zoning districts, to a principal use allowed subject to a Coastal Administrative Permit in each case within the same specified zoning districts;
 2. Require a Coastal Development Permit for a proposed retail facility that does not comply with the 1,500-foot setback from another approved retail facility including establishment of findings for consideration of such permits; and
 3. Certify that the proposed amendments are intended to be carried out in a manner fully in conformity with the Coastal Act. (**Attachment C**).
- d. Direct staff to transmit the Resolution of Intent to modify the Coastal Implementation Plan, Part 1 to the Coastal Commission for certification.
- e. Adopt a Resolution declaring that Administrative Permit fees and Coastal Administrative Permit fees apply prospectively, and applicants that have already applied and paid for a Use Permit/Coastal Development Permit are not entitled to a refund of the difference in permit fees (**Attachment F**).

SUMMARY:

The item before the Board includes two zoning ordinances (one coastal and one inland). Both draft ordinances are intended to make the following revisions to the County's commercial cannabis regulations:

- 1) Change the type of permit required for commercial cannabis activities (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing) from a Use Permit (Inland) or Coastal Development Permit (Coastal) to an Administrative Permit (Inland) or Coastal Administrative Permit (Coastal); and
- 2) Establish permitting requirements and criteria for consideration of applications for retail (dispensary) facilities that are located within 1,500 feet of another retail facility.

Proposed changes to the permit process are recommended by the Board Cannabis Committee, the Planning Commission, and staff. However, the Planning Commission recommendation relative to the setback criteria differs from the Cannabis Committee's recommendation. The Planning Commission considered both versions of the ordinances so the Board may adopt either version. Although proposed together in each ordinance, the Board may also consider the change in permit requirements and modification to retail facility setbacks individually. Changes to permit requirements can proceed independent of the retail facility setback amendments, and vice versa.

The Planning Commission recommended versions are attached to this report in **Attachments B and C**. The Committee's recommended versions are attached to this report in **Attachment E**. The primary differences between the Planning Commission recommended version and the Cannabis Committee recommended version are:

- The Cannabis Committee version created a minor exception to the setback that could be

approved by the appropriate hearing body to approve the underlying permit for the dispensary (Chief of Planning if required permits are changed as described in this report). In addition, following the Cannabis Committee review, staff and the Planning Commission considered creating a Use Permit process rather than a Variance for applications that did not meet the minor exception criteria (“major exception”). The minor exception is limited in circumstances, provides clear an enforceable criterion, and the Use Permit process provided flexibility in permitting but was not well defined.

- The Planning Commission version eliminates the “minor exception” and requires a Use Permit/Coastal Development Permit for any dispensary application that does not comply with the 1,500-foot setback. This version requires that the Planning Commission consider a report prepared by Monterey County Health Department staff and that the Planning Commission make findings to grant a Use Permit/Coastal Development Permit. Findings include that unique circumstances exist and that the dispensary will not adversely impact the community.

The Board can consider two fundamentally different approaches to regulation; establish thresholds that are easy to understand but difficult to create, or review each individual application on a case by case basis which provides flexibility in permitting but creates ambiguity in the criteria. After vetting through the public regulation process, the resolution before the Board today would adopt the version recommended by the Planning Commission.

Permits

The Administrative Permit process maintains discretion in review of permits, provides public notice of pending actions, and maintains opportunity for due process, while streamlining the permitting process by dispensing with public hearings on noncontroversial permits. An Administrative Permit process is recommended for the following reasons: to align cannabis permit requirements with similar uses in the zoning ordinance; to help to address looming State deadlines for permitting and licensing cannabis activities; to decrease permit timeframes for applicants; and to decrease workload for land use permitting staff. In amending the permit requirement, staff has identified the need to reconcile the cost difference in permit fees. A separate resolution is recommended for adoption by the Board to clarify that applicants who have submitted for a Use Permit/Coastal Development Permit will not be refunded the difference in fees between the UP/CDP and an Administrative Permit but Administrative Permit fees will be applied prospectively for all new applications (**Attachment F**).

Setbacks

Amendments to the 1,500-foot setback required between retail facilities are returning to the Board of Supervisors for consideration. On March 13, 2018, staff presented draft ordinances that removed the setback required between dispensaries and instead required a finding of *public convenience or necessity*. At the hearing, the Board declined to adopt the amendments to the 1,500-foot setback because the criteria was considered nebulous. The Board directed staff to return to the Cannabis Committee for review and recommendation. Staff returned to the Cannabis Committee on April 6, 2018 and also July 23, 2018 to get direction on revisions to the draft ordinance. This subsequent redrafted ordinance, which was approved by the Cannabis Committee, came to the Planning Commission for review and recommendation to the Board on September 12, 2018 and October 10, 2018. The draft ordinance language recommended by the Cannabis Committee was ultimately revised

by the Planning Commission as further discussed below. The draft ordinances before the Board today represent the outcome of those Planning Commission recommended changes. The previous iteration of the draft ordinances, which was approved and recommended by the Cannabis Committee, (not the version recommended by Planning Commission for adoption) are also attached to this report for reference (**Attachment E**).

As drafted, the ordinances recommended for adoption by staff and the Planning Commission would require a Use Permit (Inland) or Coastal Development Permit (Coastal) for any dispensary application that does not comply with the 1,500-foot setback requirement. The Planning Commission is designated as the Appropriate Authority to consider these permits. The Planning Commission would be required to consider a report from Monterey County Public Health, and make two mandatory findings in order to grant a Use Permit/Coastal Development Permit to permit a dispensary within 1,500 feet of another dispensary that address potential health impacts.

Additional information on the draft ordinance is provided in the discussion below.

DISCUSSION

Change in permit requirements

Monterey County Code requires approval of a Use Permit (inland) or Coastal Development Permit (coastal) for commercial cannabis activities. RMA, the Planning Commission, and the Cannabis Committee recommend that the permitting process for commercial cannabis activities be simplified to reflect what has become a relatively standard review and approval process. For cultivation, the only controversy has been the potential for offsite odor, which has been addressed with a standard condition of approval on all further projects. For retailers, the main controversy surrounds the existing 1,500-foot setback requirement, which is being addressed as part of these ordinances. Although streamlined, the Administrative process would still afford public opportunity to request a hearing if an issue arises, while allowing the large number of non-controversial permits to be processed more expeditiously.

Recently released draft permanent state regulations interpreting Section 26050.2 of the Business and Professions Code implement a pending deadline that the state will not issue any new temporary licenses or extend any existing temporary state licenses for after December 31, 2018. CSAC, working with Monterey County, recently successfully brought SB 1459 to change language in Section 26050.2 of the Business and Professions Code. The state will now issue provisional licenses in 2019 so that local jurisdictions have more time to process local permits. However, given the large number of pending permits in Monterey County, the process still needs to be expedited in order to work through the large volume of applications.

The Administrative Permit process is intended to expedite work flow and reduce the time needed to process certain development applications which are of a minor and non-controversial nature by eliminating unnecessary hearings and providing the Chief of Planning with the authority to approve the permits. The Administrative Permit process maintains review of applications by all land use departments as well as public notice of pending decisions. During the public noticing period for an Administrative Permit, any interested member of the public can request a public hearing and, upon receipt of such a request, the Chief of Planning will schedule the matter for hearing before a decision is

made. Administrative Permits are discretionary so individual review of applications pursuant to the California Environmental Quality Act (CEQA) will continue. In addition, the Zoning Ordinance provides the authority to the Chief of Planning to refer any requested permit that is controversial or precedent setting to the Planning Commission by the Director of Planning with or without a public request for a hearing.

Lastly, the proposed change in permitting requirements would align commercial cannabis uses with permitting of non-cannabis uses of a similar character, and intensity, already established in Titles 20 and 21. In developing the current cannabis regulations, the County added commercial cannabis activities as a conditional use allowed in certain zones that already permitted similar non-cannabis uses. For instance, cannabis cultivation is permitted in Farmland Zoning where a cultivation of crops other than cannabis is a principal use allowed. The proposed amendments would classify commercial cannabis uses similar to other uses in the same zones without changing the locations or criteria for cannabis uses.

Fees

Pursuant to Chapter 1.40 of the Monterey County Code, all fees, penalties, refunds, reimbursements, and charges of any kind collected by the County may be specified in the Monterey County Fee Resolution. The Board has adopted fee resolutions for land use departments that are intended to recover some of the costs associated with processing permits and entitlements. Land use department fee articles (Collectively Articles IX, X, XVII, XIX, and XX of the Monterey County Fee Resolution) are uniformly constructed across departments in order to administer fees efficiently. Adding together fees adopted for review and processing of permits and entitlements from each land use department, inclusive of fees for General Plan implementation, and technology scanning and storage fees, for the purposes of cannabis entitlements and this discussion, the current fees in place include:

INLAND	FEE
Use Permit	\$8,654.27
Administrative Permit	\$6,226.28
Difference	\$2,427.99

COASTAL	FEE
Coastal Development Permit	\$9,703.35
Coastal Administrative Permit	\$6,235.19
Difference	\$3,468.16

If the Board elects to change the permitting requirements, staff recommends that the Board adopt a Resolution clarifying that applicants who have already applied and paid for a Use Permit or Coastal Development Permit are not entitled to a refund of the difference in permit fees. Many of the applications submitted thus far are for cannabis activities that are already operating under a temporary status in advance of obtaining the required permits and entitlements. Due to challenges from a new industry, staff time associated with coordination on state temporary licensing, communications and compliance inspections for ongoing “good standing” verification, and other related efforts to simultaneously enforce temporary permissions in addition to processing entitlements to permit on-going operations far exceed the difference in fee amounts. The issues have settled so staff believes that the

process will not take as much staff time moving forward. Therefore, future applicants who are not currently operating but who are seeking permission to begin operating a cannabis business would be charged the Administrative/Coastal Administrative Permit fee.

Dispensary Setbacks

The Monterey County Code requires that a cannabis dispensary be located more than 1,500 feet from another dispensary. These setbacks were established to distribute the density of dispensaries and to align with anticipated state regulations. However, the setbacks have created challenges processing applications and current state law does not specifically limit potential densities of dispensaries. To address local permitting challenges, staff has been directed to explore amending the setback requirement between dispensaries.

On March 13, 2018, staff presented draft ordinances to the Planning Commission that would have deleted the 1,500-foot setback and instead required a review of public convenience and necessity. The Board found the public convenience and necessity criteria unclear and directed staff to return to the Cannabis Committee for additional direction. Staff revised the retailer setback requirements as directed by the Cannabis Committee to include an exception to the 1,500-foot setback required between dispensaries if an applicant could demonstrate that special circumstances exist. Special circumstances included location within a Community Area, Rural Center, or Large Shopping Center. The number of exceptions were capped to 3 dispensaries in each Community Area, and 2 dispensaries in each Rural Center of Large Shopping Center. In addition, at the direction of the Cannabis Committee, RMA staff coordinated with Public Health staff to identify health policies to be considered for incorporation into the draft ordinances.

Having made substantial revisions to the previously considered ordinance (public convenience or necessity version), staff returned to the Planning Commission for review and recommendation of the revised ordinance on September 12, 2018. The draft ordinances presented to the Planning Commission on September 12, 2018 would have:

- 1) Created a “Minor Exception” to the 1,500-foot setback required between retail facilities if a retailer would be located in a Community Area, Rural Center, or “Large Shopping Center”, and would not result in more than 3 retail facilities within a Community Area or 2 retail facilities within a Rural Center or Large Shopping Center. “Large Shopping Center” is defined in the ordinance and detailed below. The Chief of Planning would be the appropriate authority to consider whether the criteria is met; and
- 2) Created a “Major Exception” for retail facility applications that do not qualify for the Minor Exception. The major exception would have required an applicant obtain a Use/Coastal Development Permit if there is an existing retail facility within 1500 feet. The Planning Commission would be the appropriate authority to consider these permits.

At the time, Public Health staff recommend that the ordinances be modified to remove the “major exception” and to disallow minor exceptions to the setback in areas of the County having a high proportion of youth, within low-income communities, and that a cap on the number of dispensaries be considered. Options presented by Public Health for the cap included:

Option 1: Seven retail facilities in the unincorporated areas of the County based on a ratio of one retail facility per 15,000 inhabitants in unincorporated areas of the County; or

Option 2: Twenty retail facilities County-wide, inclusive of retailers within incorporated city limits, based on a ratio of one retail facility per 22,000 inhabitants in the County.

At the hearing, the Planning Commission voted to continue consideration of a recommendation to the Board of Supervisors on the ordinances to October 10, 2018 and provided direction to staff to return with revised ordinances that eliminate the “minor exception/major exception” and create a Use Permit/Coastal Development Permit process with applicable criteria for consideration of cannabis dispensary applications that do not comply with the 1,500-foot setback.

On October 10, 2018, staff returned to the Planning Commission with revised ordinances. The Commission recommended that the Board of Supervisors consider adopting ordinances requiring a Use Permit or Coastal Development Permit for any dispensary application that does not comply with the 1,500-foot setback requirement. The Planning Commission is designated as the Appropriate Authority to consider these permits and the Planning Commission would also be required to consider a report from Monterey County Public Health and make two mandatory findings in order to grant a Use Permit/Coastal Development Permit. The required findings include:

1. The retailer, as proposed, has demonstrated there are special circumstances applicable to subject property and within the project vicinity, including but not limited to location within a community area, rural center, or large shopping center.
2. The retailer, as proposed, will not result in a density or concentration of retailers in the community, as compared to the density of retail facilities existing in other communities, that would do any of the following:
 - a. Disproportionately impact a low-income community;
 - b. Disproportionately impact a community with a high proportion of youth; or
 - c. Adversely impact the public health of persons residing or working in the community.

This revised version of the ordinances is what has come to the Board of Supervisors for consideration.

In analyzing the various options presented thus far, staff recognizes that formal policy decisions on variables such as maximum permissible densities of retail facilities are difficult to determine, but would provide more detailed guidance in consideration of individual permits for staff, the public, and decision makers. Conversely, the ability to review permits on a case-by-case basis provides decision makers the desired flexibility and discretion in the permitting process but makes decisions on appropriate densities and locations more ambiguous and subject to interpretation for individual projects. Staff, the Planning Commission, the Board of Supervisors, and the Cannabis Committee have all struggled to balance many of these factors through the development of these draft ordinances. Ultimately, this is a policy decision for the Board of Supervisors.

California Environmental Quality Act (CEQA)

The state legislature provides a statutory exemption from CEQA for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review. (Business and Professions Code section 26055(h)). This statutory exemption expires July 1, 2019. The County's draft ordinances require an Administrative/Coastal Administrative Permit for all commercial cannabis activities, and these permits are individually subject to CEQA review. Therefore, these ordinances are statutorily exempt from CEQA review pursuant to Business and Professions Code section 26055(h).

Planning Commission Recommendation

On October 10, 2018, the Planning Commission held a public hearing to make a recommendation to the Board on the ordinances amending the setback requirements. At the hearing, the Commission adopted a Resolution recommending that the Board adopt the ordinance amending the inland zoning ordinance (Title 21) and adopt a Resolution of Intent to amend the coastal zoning ordinance (Title 20) by a vote of 8 ayes, 0 noes, and 1 abstention. The proposed ordinance/Resolution of Intent before the Board reflect the edits suggested by the Commission.

OTHER AGENCY INVOLVEMENT:

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

- Resource Management Agency
- Health Department
- County Counsel's Office

FINANCING:

Funding for staff time associated with drafting these amendments is included in each Departments FY18-19 adopted Budgets.

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. Likely changes in services are limited to permitting and inspection of cannabis dispensaries that may be permitted beyond the original estimates of theoretical maximum numbers of dispensaries under. Permit fees, taxes, and the ability to charge for inspections are already in place to offset these costs.

A separate report is being prepared by the CAO's Office for how cannabis tax revenues may be used to help implement the cannabis program, including enforcement.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The cannabis regulatory program is woven through several areas of the Board's strategic initiatives. The growing cannabis industry is an emerging economic driver in Monterey County, which seeks to come into compliance with land use regulations. This action represents an effective response to our County customers' need to do that. These amendments will allow the County to process applications in a timely manner while remaining in accordance with state law. In addition, carefully crafted ordinances will balance the economic potential and customer needs with the County's responsibility to protect the health and safety of its residents.

Check the related Board of Supervisors Strategic Initiatives:

- ☒ Economic Development
- ☒ Administration
- ☒ Health & Human Services
- ☐ Infrastructure
- ☒ Public Safety

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Reviewed by: Brandon Swanson, RMA - Planning Services Manager
Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use

BS (Brandon Swanson For Craig Spencer)
BS

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

- Attachment A - Draft Zoning Ordinance (Title 21, Inland) - redline version
- Attachment B - Draft Zoning Ordinance (Title 21, Inland) - clean version
- Attachment C - Draft Resolution of Intent
 - Exhibit 1 - Draft Zoning Ordinance (Title 20, Coastal) - redline version
- Attachment D - PC Resolution Recommending adoption & Intent to adopt
- Attachment E - Draft ordinances presented to the Cannabis Committee
 - Exhibit 1 - Draft Ordinance (Inland)
 - Exhibit 2 - Draft Ordinance (Coastal)
- Attachment F - Fee Resolution

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 (Michael DeLapa); 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; Alex Lorca; John Bridges; Michael Gilson; Planning File REF150048