



Monterey County

Board of Supervisors
Chambers
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---Board Report

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Consider draft ordinances amending Monterey County Code (Zoning Ordinances) to create a pilot program establishing permit requirements and regulations for limited outdoor commercial cannabis cultivation in the Big Sur, Carmel Valley, and Cachagua Planning areas.
(Outdoor Pilot Program - REF150048)

RECOMMENDATION:

It is recommended that the Board of Supervisors Cannabis Committee:

1. Receive a report regarding public outreach and feedback on the Pilot Program for outdoor cannabis cultivation.
2. Receive a report regarding projected staffing resources and estimated tax revenue.
3. Consider and provide input to staff on a draft ordinance amending Title 20 of the Monterey County Code (coastal areas) to create a pilot program establishing land use regulations for limited outdoor commercial cannabis cultivation in the Big Sur Land Use Plan area. Once accepted, similar language will be applied to Title 21, Non-Coastal ordinance for the Carmel Valley and Cachagua Planning areas.
4. Provide direction to staff.

SUMMARY:

Based on direction from the Board of Supervisors and the Cannabis Committee, Resource Management Agency (RMA) staff prepared a draft ordinance amending Title 20 of the Monterey County Code (Coastal Zoning) to establish a pilot program for permitting limited outdoor cannabis cultivation in the Big Sur Land Use Plan area (**Exhibit B**). Due to the need for early consultation with Coastal Commission staff on the draft ordinance and to avoid repetition in early review, staff is presenting only the draft coastal ordinance at this time. An inland ordinance, substantially the same as the coastal ordinance, will be prepared for the Carmel Valley and Cachagua planning areas following Cannabis Committee review and direction on this first draft. This report addresses both inland and coastal regulations and describes where material differences may occur between the two. Draft ordinances are subject to change pending

a more detailed review by the Office of County Counsel, and comments received through the public hearing process.

The draft ordinances would establish a 5-year pilot program for permitting and regulation of limited outdoor cannabis cultivation only in the Big Sur Land Use Plan area, Carmel Valley Master Plan area, and Cachagua Area Plan area of unincorporated Monterey County. The purpose of the pilot program is to gather data and gain experience for future consideration of long-term regulations for outdoor cultivation at the end of the 5-year period.

As drafted, the ordinances require an Administrative Permit (Inland - Carmel Valley and Cachagua) or Coastal Administrative Permit (Coastal- Big Sur) to allow commercial outdoor cannabis cultivation up to 10,000 square feet of canopy on "Qualified properties."

Administrative Permits and Coastal Administrative Permits are noticed to neighbors and the public, providing opportunity for public involvement in permitting of individual properties under this pilot program in each case. Qualified properties include:

1. Location in the Big Sur Land Use Plan area (coastal), Carmel Valley Master Plan area (Inland), or Cachagua Area Plan area (Inland)
2. Location in one of the following zoning districts:
 - a. Big Sur Land Use Plan - Rural Density Residential (RDR) or Watershed and Scenic Conservation (WSC) zoning districts.
 - b. Carmel Valley Master Plan area - Rural Density Residential (RDR) zoning district; and
 - c. Cachagua Area Plan - Rural Density Residential (RDR) and Resource Conservation (RC) zoning districts,
3. The property must be at least 10 acres in size; and
4. The property must have been legally cultivated with medical cannabis prior to January 1, 2016.

In addition to the property qualifications summarized above, the draft pilot program ordinance establishes regulations to minimize nuisances, protect neighborhood character, and protect the environment. Draft qualifications and regulations have been developed with feedback from industry representatives, Land Use Advisory Committees (LUAC) comments, public comments, and with guidance from County staff involved in permitting and enforcement. Based on these criteria, staff estimates that the pilot program would up to 50 outdoor grow sites. Staff is seeking input and direction from the Cannabis Committee on the draft ordinance.

Based on that direction, staff will make necessary updates and ask counsel for a more detailed legal review. That draft will be used as the basis for drafting an inland ordinance for Carmel Valley and Cachagua areas. Both ordinances will be presented to the Planning Commission for a recommendation to the Board of Supervisors. In the Coastal Zone (Big Sur), the pilot program ordinance will need to be certified by the Coastal Commission before it can take effect but the Board must take action prior to July 1, 2019 in order for the ordinance to qualify for a CEQA exemption.

DISCUSSION:

Comments on the pilot program ranged from strong support to strong opposition.

Industry: Primary concerns from the Big Sur Farmers Association (BSFA) are that the regulations maintain flexibility in order to allow significant participation. Specifically, the BSFA requests the County consider removal of the 10 acre lot size requirement and replacement with setbacks and reduced maximum canopy area on lots less than 10 acres. BSFA also requests a transfer of cultivation credit program that would allow those who have moved from the previously cultivated site since 2016. The credit transfer program would also allow those who don't qualify under the regulations to relocate onto a larger qualifying property, increasing the maximum total canopy area on the larger parcel and providing the grower with an opportunity to cultivate under the pilot program.

Internal County staff: Some concerns still remain that the existing cannabis regulations are not fully settled. Specific feedback on how to make permitting and enforcement more effective was provided and has been incorporated in the draft ordinance.

LUAC: The Big Sur, Carmel Valley, and Cachagua LUACs all unanimously supported the pilot program, provided the concerns raised at those meetings are addressed. Suggestions from the LUACs include but are not limited to:

- ☐ Develop performance criteria from which to measure pilot program success or failure (staff is in the process of developing goals and measurement criteria)
- ☐ Provide robust security and enforcement. Sheriff presence in these areas is limited
- ☐ Invest cannabis revenues in affected communities including increased emergency response, road repairs, playgrounds, fields, and other amenities
- ☐ Develop a plan to address odors and other potential nuisances
- ☐ Consider impacts on water, electricity, private roads, night sky, and important

environmental resources in the area; and

- ☐ Consider a residency requirement to minimize influence from out-of-town interests who may not be as respectful to the community and environment as locals.

This list of comments is not exhaustive. For more information on public comments refer to the detailed discussion in **Exhibit A**, the LUAC recommendations in **Exhibit C**, and correspondence received on the pilot program in **Exhibit D**.

California Environmental Quality Act (CEQA):

Direction from the Cannabis Committee on December 18, 2018 was to take advantage of an exemption in California Business and Professions Code section 26055(h) which provides a statutory exemption from CEQA for the adoption cannabis ordinances when the ordinance requires discretionary review of individual permits pursuant that are themselves subject to environmental review under CEQA. The statutory exemption provided in the Business and Professions Code section 26055(h) expires on July 1, 2019 so the Pilot Program must be considered and approved by the Board of Supervisors prior to that date in order to apply the exemption to the ordinance. The draft pilot program would require discretionary review of individual applications that would each be subject to CEQA review.

See **Exhibit A** for a more detailed discussion.

OTHER AGENCY INVOLVEMENT:

The following Departments or Agencies have been involved:

- Resource Management Agency
- Environmental Health Bureau
- Agricultural Commissioner
- Treasurer/Tax Collector
- Sheriff's Office
- District Attorney's Office
- County Counsel's Office
- Economic Development
- CAO's Office

FINANCING:

Funding for staff time associated with development of the pilot program is included in the FY18-19 Adopted Budget for each of the involved Departments/Agencies. Implementation of new regulations is anticipated to impact services, which staff believes will necessitate additional staff. If the pilot program regulations are adopted, large upfront costs that will impact the

General Fund are anticipated.

The County Administrative Office (CAO), will provide an overview of finances for the Cannabis Committee consideration.

Based on preliminary estimates of approximately 50 permits that may qualify under the pilot program and a maximum canopy area of 10,000 square feet, outdoor grows would generate about \$500,000 in taxes at a tax rate of \$1/square foot of canopy. Initial resource and staffing cost estimates from each County Department involved in permitting and enforcement total approximately \$1,000,000, meaning that if adopted, the pilot program will require supplemental funding from cannabis revenues or the general fund to implement and enforce. These estimates are preliminary and options are available to the Board of Supervisors including increasing the permissible canopy area allowed in the pilot program or setting the tax rate higher than \$1/square foot to increase potential tax revenue and working with County Department heads to cut costs from the initial estimates. Reductions in funding to County Departments may result in less effective or efficient permitting and enforcement.

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Approved by: Carl Holm, AICP, Director, RMA

Attachments:

Exhibit A Detailed Discussion

Exhibit B Draft ordinance adding Chapters 20.69 (coastal pilot program)

Exhibit C Land Use Advisory Committee recommendations

C-1 - Big Sur

C-2 - Carmel Valley

C-3 - Cachagua

Exhibit D Correspondence

Exhibit E Land Use Maps

E-1 - Big Sur

E -2 - Camel Valley

E-3 - Cachagua