



## Legislation Details (With Board Report)

**File #:** 21-443      **Name:** REF150048 Revisions to the Outdoor Cannabis Cultivation Pilot Program and Renewable Energy Requirements for Indoor Cultivation

**Type:** General Agenda Item      **Status:** Passed - RMA Administration

**File created:** 5/10/2021      **In control:** Board of Supervisors

**On agenda:** 5/18/2021      **Final action:** 5/18/2021

**Title:** REF150048 - Revisions to the Outdoor Cannabis Cultivation Pilot Program and Renewable Energy Requirements for Indoor Cultivation  
Public hearing to consider adoption of two ordinances amending Titles 20 and 21 of Monterey County Codes (coastal and non-coastal zoning ordinances):  
a. Revise renewable energy generation requirements for indoor cannabis cultivation (Chapters 20.67 and 21.67);  
b. Expand the outdoor cannabis cultivation regulations to include the permanent grazing zoning district within the Cachagua Area Plan as locations where outdoor cultivation may be permitted (Chapter 21.69); and  
c. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet, modify the criteria for granting an exception to the setback from the nearest off-site structure, increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet, and extend the pilot program from 5 years to 8 years (Chapters 20.69 and 21.69).  
Location: Big Sur, Carmel Valley, and Cachagua Planning areas  
Proposed CEQA action: Statutorily exempt pursuant to California Business and Professions Code section 26055(h).

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Board Report, 2. Attachment A – Draft Ordinance – Inland (clean), 3. Attachment B – Draft Ordinance – Coastal (clean), 4. Attachment C – Planning Commission Recommendation (2), 5. Attachment D – Draft Agricultural Advisory Committee minutes, 6. Attachment E – Current version of Chapter 21.69 - Outdoor cannabis cultivation pilot program, 7. Attachment F – Draft Ordinance – Inland (redline), 8. Attachment G – Draft Ordinance – Coastal (redline), 9. Item No. 13 PowerPoint Presentation, 10. Completed Board Order Item No. 13 Corrected, 11. Ordinance No. 5350, 12. Ordinance No. 5351

Date	Ver.	Action By	Action	Result
5/18/2021	1	Board of Supervisors	adopted - rma administration	

### REF150048 - Revisions to the Outdoor Cannabis Cultivation Pilot Program and Renewable Energy Requirements for Indoor Cultivation

Public hearing to consider adoption of two ordinances amending Titles 20 and 21 of Monterey County Codes (coastal and non-coastal zoning ordinances):

- a. Revise renewable energy generation requirements for indoor cannabis cultivation (Chapters 20.67 and 21.67);
- b. Expand the outdoor cannabis cultivation regulations to include the permanent grazing zoning district within the Cachagua Area Plan as locations where outdoor cultivation may be permitted (Chapter 21.69); and
- c. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet, modify the criteria for granting an exception to the setback from the nearest off-site structure, increase the maximum allowable

canopy from 10,000 square feet to 20,000 square feet, and extend the pilot program from 5 years to 8 years (Chapters 20.69 and 21.69).

**Location:** Big Sur, Carmel Valley, and Cachagua Planning areas

**Proposed CEQA action:** Statutorily exempt pursuant to California Business and Professions Code section 26055(h).

**RECOMMENDATION:**

Staff recommends that the Board of Supervisors:

- a. Find the project is the adoption of 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 (**Attachment A**) amending Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify energy requirements for indoor cannabis cultivation and amending Chapter 21.69 of Title 21 (the Outdoor Cannabis Cultivation Pilot Program) to:
  - 1) Add the permanent grazing zoning district within the Cachagua Area Plan as locations where outdoor cannabis cultivation may be permitted;
  - 2) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
  - 3) Modify the criteria for granting an exception to the setback from the nearest off-site structure;
  - 4) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
  - 5) Extend the pilot program from 5 years to 8 years;
- c. Adopt an ordinance (**Attachment B**) amending Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify energy requirements for indoor cannabis cultivation and amending Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
  - 1) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
  - 2) Modify the criteria for granting an exception to the setback from the nearest off-site structure;
  - 3) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
  - 4) Extend the pilot program from 5 years to 8 years;(subject to certification by the California Coastal Commission)
- d. Certify that the ordinance amending the energy requirements for indoor cannabis cultivation and amending the outdoor commercial cannabis cultivation pilot program (item “c” above) is intended to be carried out in a manner fully in conformity with the Coastal Act;
- e. Direct staff to transmit the ordinance (item “c” above) to the California Coastal Commission for certification; and
- f. Direct staff and the Board Cannabis Committee to annually review the outdoor cannabis cultivation pilot program to include consideration of revisions to the program until 100 permits are approved.

It is recommended that the Board take action on final ordinances before July 1, 2021 in order to apply the statutory exemption from CEQA that expires on July 1, 2021.

**SUMMARY/DISCUSSION:**

On June 18, 2019, the Board of Supervisors adopted Chapters 20.69 and 21.69 of the Monterey County Code (coastal and inland) creating a pilot program (Program) for limited outdoor commercial cannabis cultivation in the Big Sur, Carmel Valley, and Cachagua plan areas. Since adoption, the County has received three applications for outdoor cultivation pursuant to the adopted regulations. One of the applications received was for cultivation in the Central Salinas area, outside of the Program boundaries. The other two applications are in the Cachagua area and are under review.

At the direction of the Board of Supervisors Cannabis Committee, staff coordinated an industry stakeholder meeting to gain input from the industry and to identify barriers to potential participation in the Program. A

stakeholder meeting was held on March 9, 2020 in Carmel Valley. Results of the stakeholder meeting were reported to the Cannabis Committee on April 1, 2020. The Cannabis Committee accepted the report and directed staff to return with additional information on potential amendments. Staff returned to the Cannabis Committee to discuss potential amendments on July 22, 2020, August 5, 2020, and October 30, 2020. Ultimately, the Board of Supervisors and Cannabis Committee directed staff to prepare ordinances updating the Program to remove some of the barriers to Program entry.

Separately, on February 23, 2020, the Board of Supervisors provided direction to staff to prepare ordinances amending the renewable energy generation requirements that apply to indoor cultivation to be in line with other jurisdictions.

Based on direction from the Board of Supervisors and the Cannabis Committee, Housing & Community Development (HCD) staff prepared draft ordinances amending Titles 20 and 21 of the Monterey County Code (coastal and non-coastal) (**Attachments A and B, respectively**).

The draft ordinances were originally prepared to:

- Within the inland areas, expand the Program to:
  - a. Add the Central Salinas Valley Area Plan to the areas where outdoor commercial cannabis may be permitted.
  - b. Add Permeant Grazing and Rural Grazing zoning designations within the Central Salinas Valley area and Cachagua areas to zoning districts where outdoor cannabis cultivation may be permitted. The Program is currently limited to the Rural Density Residential and Resource Conservation zoning designations in the Cachagua area.
- Within both the inland and coastal areas, the following Program regulations would be amended:
  - a. Extend the five year pilot program to eight years;
  - b. Reduce the setback required between cannabis cultivation and the nearest off-site structure from 500 feet to 250 feet;
  - c. Modify the criteria for granting an exception to the setback required between a cannabis cultivation site and the nearest off-site structure; and
  - d. Increase the maximum permissible canopy from 10,000 square feet to 20,000 square feet;
- Both Ordinances would also amend regulations applicable to indoor cannabis cultivation by removing the requirement for onsite renewable energy generation that is capable of providing at least 50% of the projected energy demand and instead require onsite renewable energy generation to the extent feasible, or purchase of renewable energy credits, or participation by the cultivator in a program provided by the utility provider that ensures all energy used at the site is supplied by renewable sources.

### **Planning Commission and Agricultural Advisory Recommendations**

The draft ordinances were considered by the Planning Commission on March 31, 2021 . At the hearing, the Planning Commission requested a review and recommendation from the Agricultural Advisory Committee (AAC) before forwarding a recommendation to the Board of Supervisors. The hearing at the Planning Commission was continued to April 28, 2021. On April 22, 2021, the Agricultural Advisory Committee ( **Attachment D**) reviewed the draft ordinance and recommended approval with the following revisions:

1. Remove the Central Salinas Valley area from the ordinance; and

2. Remove the reduction in setbacks from the nearest off-site structure from 500 feet to 250 feet.

Significant portions of the Central Salinas Valley area are used for non-cannabis agriculture. Concerns were raised by the public and the AAC regarding the potential for conflicts between non-cannabis farming operations and outdoor cannabis operations. Non-cannabis agriculture may apply pesticides which could contaminate outdoor cannabis crops causing failure of the cannabis crops to pass stringent cannabis testing requirements. This could lead to lawsuits between cannabis growers and neighboring non-cannabis agriculture operators and may result in financial responsibilities for damaged crops. This conflict has been occurring in other jurisdictions within the state. Also occurring in other jurisdictions are lawsuits over cannabis crops affecting the taste and smell of wine grapes. There is little or no standard for setbacks on these two issues at this time although the issue is being studied. Other concerns included water availability, protection of grazing land for livestock, and other good neighbor considerations. Arguments in response included the ongoing requirement to demonstrate proof of cultivation of medicinal cannabis in the past, as required in the existing regulations and unmodified in the proposed regulations, as well as limited interest from property owners in the Central Salinas Valley area.

On April 28, the Planning Commission considered the Agricultural Advisory Committee recommendations and voted with 5 ayes, 1 no, 1 abstention, and 3 absent to recommend approval of the ordinances (**Attachment C**) as follows:

- Revise the ordinance to remove the Central Salinas Valley area, and adopt the ordinance, as revised, to amend Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 21.69 (the Outdoor Cannabis Cultivation Pilot Program) to:
  - a. Add the permanent grazing land zoning district within the Cachagua Area Plan as locations where outdoor cannabis cultivation may be permitted;
  - b. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
  - c. Modify the criteria for granting an exception to the setback from the nearest off-site structure;
  - d. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
  - e. Extend the pilot program from 5 years to 8 years.
- Adopt an ordinance to amend Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
  - a. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
  - b. Modify the criteria for granting an exception to the setback from the nearest off-site structure;
  - c. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
  - d. Extend the pilot program from 5 years to 8 years.
- Direct staff to annually review the outdoor cannabis cultivation pilot program to include consideration of revisions to the program until 100 permits are approved.

Staff is recommending approval of the ordinances (**Attachments A and B**) as recommended by the Planning Commission.

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

Direction from the Cannabis Committee and the Board of Supervisors 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 of cannabis ordinances when the ordinance requires discretionary review of individual permits 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, 2021, 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 ordinances would not change the requirement for discretionary review of individual applications, which would be subject to CEQA review.

### **Coastal Commission Certification**

The ordinances amending coastal regulations require review and certification by the California Coastal Commission before the changes become operative. County staff has coordinated with Coastal Commission staff on the draft ordinances and due to the CEQA exemption timeline, staff recommends that the Board adopt the coastal ordinance subject to certification “as is” by the Coastal Commission. If adopted by the Board, staff will forward the ordinance to the Coastal Commission with a request for certification. The ordinance will only take effect if certified by the Coastal Commission. Inland regulations would take effect on the 31<sup>st</sup> day after adoption.

### **OTHER AGENCY INVOLVEMENT:**

This report has been drafted by Housing & Community Development with input from the Agricultural Advisory Committee and the Planning Commission.

In drafting the ordinances, staff consulted multiple times with industry representatives, received direction from the Board Cannabis Committee, received a recommendation from the Agricultural Advisory Committee (AAC), coordinated with Coastal Commission staff, and presented draft ordinances to the Planning Commission for a recommendation.

The draft ordinances have been reviewed and approved as to form by the Office of County Counsel.

### **FINANCING:**

Staff time associated with preparation of the ordinances and this report is included in the FY 20/21 budget for the agencies involved.

In consideration of adoption of the Pilot Program in 2019, staff estimated that approximately 50 properties may qualify. With a maximum canopy area of 20,000 square feet, outdoor grows would generate about \$1 million in taxes, assuming a tax rate of \$1/square foot of canopy. As a reminder, the Board has considered a \$2.50 tax rate for outdoor cultivation, but an amendment to Monterey County Code Chapter 7.100 is still required. The amendment to Chapter 7.100 will be considered separately in the near future. Initial resource and staffing cost estimates from each County Department involved in permitting and enforcement also totaled approximately \$1 million.

Only three permit applications have been submitted under the program to date. Staff suggests that with changes proposed, these estimates above would remain applicable and are more likely to be realized.

### **BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

Outdoor cannabis ordinances would align with several of the Board’s Strategic Initiatives. Processing these amendments would allow the County to process applications in a timely manner in accordance with new state law, provide additional regulations to maintain health and safety within this emerging industry, and allow for new economic opportunities that currently do not exist.

Check the related Board of Supervisors Strategic Initiatives:

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

Prepared by: Craig W. Spencer, Planning Services Manager, ext. 5233

Reviewed by: Erik Lundquist, AICP, Chief of Planning

Approved by: Mike Novo, AICP, Interim HCD Director

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

- Attachment A - Draft Ordinance - Inland (clean)
- Attachment B - Draft Ordinance - Coastal (clean)
- Attachment C - Planning Commission Recommendation
- Attachment D - Draft Agricultural Advisory Committee minutes
- Attachment E - Current version of Chapter 21.69 - Outdoor cannabis cultivation pilot program (proposed to be amended as described in Attachment A) - For context
- Attachment F - Draft Ordinance - Inland (redline)
- Attachment G - Draft Ordinance - Coastal (redline)

cc: Front Counter Copy; Planning Commission; HCD-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; HCD-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch; John H. Farrow; Cannabis Interested Parties List: Outdoor Cannabis Pilot Program Interested Parties List; Planning File REF150048