



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: ORD 15-010, **Version:** 1

- a. Consider the adoption of a 45-day interim ordinance as an urgency measure pursuant to Government Code Section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of the County, pending the County's study and consideration of regulations (4/5th vote required); and
 - b. Set a public hearing for July 28, 2015 at 1:30 p.m. for the Board of Supervisors' consideration of extension of the interim ordinance.
- (Medical Marijuana Interim Urgency Ordinance - REF150047; Statutorily exempt under CEQA)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a 45-day interim ordinance (attachment A) as an urgency measure pursuant to Government Code Section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of the County, pending the County's study and consideration of regulations (4/5th vote required); and
- b. Set a public hearing for July 28, 2015 at 1:30 p.m. for the Board of Supervisors' consideration of extension of the interim ordinance.

SUMMARY:

Staff recommends the temporary ban to enable the County to study and develop suitable land use regulations to appropriately address the potential public safety, environmental, and other impacts from unregulated medical marijuana dispensaries and large scale cultivation of medical marijuana. Under the ordinance, the use of real property for the collective or cooperative cultivation of marijuana for medical purposes or for medical marijuana dispensaries would be prohibited. (See Section 4 of the ordinance.)

The ordinance contains exemptions. The cultivation of a limited number of marijuana plants for personal use by a qualified patient, a patient with an identification card, or primary caregiver within the limits set forth in Health and Safety Code sections 11362.77 would be exempt from this interim ordinance. Additional exemptions are proposed for medical marijuana cultivation and dispensaries that are in existence as of the adoption of the ordinance, provided that the use had commenced and all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of the initial interim ordinance.

This interim ordinance is an urgency ordinance pursuant to California Government Code Section 65858. Under Section 65858, the County may adopt as an urgency measure an interim ordinance that prohibits any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the County is considering, studying, or intends to study within a reasonable timeframe, in order to protect the public safety, health, and welfare of its citizens. Approval of an interim ordinance as an urgency measure requires a 4/5th vote by the Board of Supervisors. If approved, the ordinance would take effect immediately and expire in 45 days, on August 21, 2015. Following notice and public hearing, the Board may extend the ordinance twice, the first time for 10 months, 15 days, and the second time for one year. Because the end of the 45 day period falls

during the Board's summer recess, staff recommends that the Board set a public hearing for July 28, 2015 to consider an extension of the ordinance for an additional 10 months, 15 days following the end of the 45-day period.

DISCUSSION:

On November 5, 1996, the California voters approved Proposition 215, the Compassionate Use Act of 1996, which is codified as Health and Safety Code section 11362.5 ("CUA"). The CUA exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use has been recommended by a physician.

On January 1, 2004, the California voters approved Senate Bill 420, the Medical Marijuana Program Act, which is codified as Health and Safety Code sections 11362.7 *et seq.* ("MMP"). The MMP clarified the scope of the CUA and facilitated the prompt identification of qualified patients and their primary caregivers. Pursuant to Health & Safety Code section 11362.77(a), a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient. In addition, they may also maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

Neither of these laws grant an unfettered right to cultivate medical marijuana, nor do they expressly or impliedly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. *Browne v. County of Tehama*, 213 Cal.App. 4th 704 (2013); *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal.4th 729 (2013). Therefore, the County may, in the exercise of its police power, adopt appropriate land use regulations for the cultivation and dispensing of medical marijuana consistent with the provisions of State law.

There is an urgent need to develop specific regulations because the Monterey County Code does not specifically regulate the use of land or structures for the dispensing or cultivation of medical marijuana. In regard to dispensaries, the County's zoning ordinances currently allow drug stores with a permit in commercial zoning districts. Under existing zoning, a new medical marijuana dispensary would require an Administrative Permit in the non-coastal areas, or a Coastal Development Permit in the Coastal Zone. In the event that a new dispensary would replace an existing legal drug store, no permit would be required for the change of commercial use within an existing structure where the nature of the use does not change.

In regard to cultivation, without the development of regulations specific to marijuana, staff has interpreted the cultivation of marijuana to meet the definition of "Agriculture". The definition of Agriculture, contained in the County's zoning ordinance is "the art or science of cultivating the ground; harvesting of crops; rearing and management of livestock; tillage; husbandry; farming; horticulture; and forestry; the science and art of the production of plants and animals useful to man; and wildlife management." Crop farming, including the cultivation of marijuana, is an allowed use, requiring no permit, in most zoning districts including lower density residential zoning districts such as Low Density Residential (LDR) and Rural Density Residential (RDR). Current County zoning regulations related to pharmacies, and indoor and outdoor cultivation of crops do not adequately address the unique legal, land use, and public health, safety and welfare issues and impacts associated with medical marijuana.

An interim ordinance is urgently needed in order to avoid potential adverse impacts on the health, safety, and welfare of Monterey County citizens from unregulated dispensing and cultivation of medical marijuana, including but not limited to the following: an increase in violent and non-violent criminal activities, adverse

environmental impacts, increased water demand, interference with farming practices, fire danger from grow light systems, extensive energy consumption, strong offensive odors, decreased property values, and increased traffic. The interim ordinance would place a temporary prohibition on medical marijuana dispensaries and cooperative or collective cultivation in the unincorporated areas of Monterey County while the County studies and considers long-term regulation.

As such, staff is suggesting that the Board of Supervisors approve an interim ordinance, as an urgency measure, prohibiting new medical marijuana dispensaries and collective and cooperative cultivation of medical marijuana while staff develops for the Board's consideration appropriate long-term land use regulations for these uses and activities.

The interim ordinance is statutorily exempt under the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

OTHER AGENCY INVOLVEMENT:

The ordinance has been drafted by the Office of County Counsel with input from the Resource Management Agency - Planning division and approved as to form by County Counsel.

FINANCING:

Funding for staff time associated with this project is included in the FY15-16 Adopted Budget for RMA-Planning and County Counsel.

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Approved by: Mike Novo, Director, RMA-Planning, ext. 5192
Carl P. Holm, AICP, Acting Director, Resource Management Agency

cc: Front Counter Copy; California Coastal Commission (if applicable); The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; CAO, Lucila Sanchez; Agricultural Commission, Eric Lauritzen; Sherriff's Office, Steve Bernal; District Attorney, Dean Fillpo; Health Department, Dr. Moreno; Tax Collector, Mari Beraz; Building Official, Dan Dobrilovic; Project File REF150047

Attachments: Attachment A-Draft Medical Marijuana Interim Ordinance (Attachment on file with the Clerk of the Board)