



Board Report

File #: 23-165, Version: 1

- a. Receive a report on initial staff findings related to commercial cannabis consumption lounges;
- b. Direct Cannabis Program staff to continue research and return with a proposed Ordinance or discontinue research; and,
- c. Provide further direction as appropriate.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

- a. Receive a report on initial staff findings related to commercial cannabis consumption lounges;
- b. Direct Cannabis Program staff to continue research and return with a proposed Ordinance or discontinue research; and,
- c. Provide further direction as appropriate.

SUMMARY:

Following the July 7, 2022, Board of Supervisors Cannabis Committee (Committee) meeting, Program staff scheduled a meeting with the eight (8) fully licensed and permitted cannabis retailers and their Authorized Agents located within the unincorporated area of Monterey County to discuss consumption lounges.

Local retailers believe that consumption lounges would be a meaningful addition to existing commercial cannabis activities within the unincorporated area of Monterey County. Industry suggests that the County begin with a pilot program within existing retail operations, which might contribute to higher local tax revenues. Staff scheduled a meeting with internal County department representatives for a preliminary review of the consumption lounge business model and anticipated requirements. Staff also scheduled a follow-up meeting with local retailers to receive additional input.

DISCUSSION:

To better understand cannabis consumption lounge business models, statutes and regulations, staff conducted initial research into existing cannabis consumption lounges across the State of California. Twelve (12) jurisdictions throughout California explicitly permit consumption lounges consistent with their local and state regulations (Attachment A). All consumption lounges are approved and regulated at the city level except in the City and County of San Francisco (San Francisco).

Some jurisdictions only permit consumption of edible goods while others also permit combustible goods, including cannabis flower and extracts. At a recent Central Coast Cannabis Program Forum, the County of Sonoma reported that they were preparing an environmental impact report as a step toward allowing cannabis consumption lounges within the unincorporated area. Sonoma County later reported they are focused on other priorities at this time.

While there are no explicit Department of Cannabis Control regulations on cannabis consumption lounges, staff has identified, the following restrictions and requirements:

- Operator must hold a Type 10 storefront retailer or Type 12 Microbusiness license inclusive of retail activities.

- Monterey County Code does not allow Type 12 Microbusiness licenses.
- Operator must restrict access to customers who are 21 and older.
- Area(s) where consumption occurs cannot be publicly visible.
- Operator cannot sell alcohol, tobacco, or non-cannabis infused food or beverage.
 - Operator may allow food items to be prepared and delivered by a 3rd party.
- Customer may not bring their own cannabis goods and must purchase cannabis goods on-site.
 - Product sold to a customer must be an amount reasonably consumed during the customer visit.
 - Unconsumed goods must leave the premises in appropriate exit packaging.
- The consumption lounge must be attached or adjacent to retail operation and under the direct supervision of the operator.
- Operating hours must be limited, for example between 6:00 am and 10:00 pm.

The industry believes that this is the next step for the licensed industry. The additional business model would make Monterey County more competitive with other jurisdictions, provide a safe environment to consume cannabis, normalize social consumption, reduce stigma, result in higher gross receipts and associated tax revenue, and increase the sales of adjacent businesses. The industry provided the following anecdotal evidence to support these claims.

- An estimated 35% of Monterey County residents are renters who cannot smoke in their rentals and don't have access to indoor public location to smoke cannabis.
 - Tourists are not allowed to smoke at beaches and other outdoor public locations regulated by local county ordinances restricting smoking or vaping any substance.
 - Although state law permits hotels to reserve smoking to one-third of rentals units, many hotels and motels do not allow smoking in any units.
- Flower, pre-rolls, or vape related products that all produce smoke when consumed, make up 70% of cannabis retail sales.
 - The industry believes that combustible consumption lounges are essential for the business model to continue to succeed.
- The implementation of consumption lounges varies among jurisdictions in scale and function.
 - The industry believes the requirements should not be so restrictive as to deter expanding their retail businesses.
- The industry encourages local regulations which allow the sale of non-cannabis food and non-alcoholic beverages on the premises.

County staff were unable to corroborate these claims. Program staff have held multiple meetings with the staff of other departments, local Fire agencies and interviewed a staff person from the California Highway Patrol (CHP) who identified a variety of issues related to permitting consumption lounges:

- Dispensaries typically have restrooms available for employees only, which are located in secure areas not accessible to customers.
 - Adding consumption lounges to dispensary retail locations may require a separate restroom with sufficient capacity for customers.
- Expanding the usage would also require an area separate from the retail area where on-site consumption would occur.
 - This may require permitted construction of partitions, walls, or doors for access.

- Adding tables and seating would require operators to submit a floor plan, which may affect their occupancy load. Adding accessory uses, such as entertainment and/or live music, could affect the land use entitlement.
- Because the customer base is anticipated to remain similar, this should not trigger an initial study.
- Barring a few exceptions, smoking is not allowed in any workplace in California.
 - References are provided in Attachments B and C.
- Exposure to smoke and odors must be limited to employees of the consumption lounge, customers who are not smoking cannabis, and neighbors adjacent to the consumption lounge.
 - San Francisco requires consumption lounge operators to install Heating, Ventilation, and Air Conditioning (HVAC) systems that are separate from the HVAC systems of the retail area and/or other businesses within a commercial space.
 - These systems operate under negative pressure and with high level filtration and exhaust functions.
 - These systems may cost upwards of \$100,000 and may require structural improvements to the roof to accommodate the additional weight.
 - San Francisco does not impose a time limit on consumption lounge customers.
 - Their cannabis consumption lounge operators do impose a time limit via restaurant pager system that vibrates and flashes to alert customers that their time has expired.
- If devices to consume cannabis are available for rent, the operator would need to install a three-compartment sink to sanitize equipment.
- Permitting consumption lounges may contribute to an increase in drugged driving, as customers could consume cannabis and then drive themselves home.
 - CHP staff shared the following insights on drugged driving:
 - Drugged driving behavior is identical to that of drivers impaired by alcohol.
 - While Field Sobriety Tests (FST) are typically tested and validated specific to alcohol, all types of FSTs can assist with determining whether a driver is impaired.
- Department staff have not explored fees or taxes on cannabis consumption lounges.
- Permitting workflow may need to be updated to include additional departments specifically for cannabis consumption lounges.

There is some recent activity regarding cannabis consumption lounges at the State level. In February 2023, Assemblyman Matt Haney of San Francisco put forward Assembly Bill 374 that would enable local jurisdictions to permit the sale of non-cannabis infused food and beverages via cannabis cafes. This bill would also permit on-site entertainment. Haney believes that this will provide an opportunity for businesses to grow and create jobs and create spaces for consumers to enjoy legal cannabis in the company of others. This was supported by data from his office on the cannabis cafes in the Netherlands, where the 700 cafes attract 1.5 million customers per year. Haney also clarified that this would only enable licensed cannabis operators to open cannabis cafes and would not permit a traditional cafe to begin selling cannabis. This item may be heard in the Business and Professions Committee in early March 2023.

Program staff requests direction from the Board of Supervisors on how to proceed with this item after considering preliminary research, industry input, and issues identified by department staff. Housing and Community Development, the Environmental Health Bureau, and local Fire agencies did not have an opinion on consumption lounges but reinforced that these operations would need to comply with all state and local requirements.

The Department of Health, Public Health Bureau has identified issues that should be explored including secondhand smoke exposure among consumption lounge employees, time limitations to avoid overconsumption, and transportation from the consumption lounge to prevent drugged driving. Below are recommendations from Public Health staff to address these concerns and mitigate harms:

- The County may consider requiring consumption lounge operators to incorporate mandatory information within their menu or check-in process, such as the dangers of overconsumption, consuming while pregnant or breastfeeding, and drugged driving.
- The County may also consider requiring consumption lounge operators to publish quick response codes which customers may scan for information on transportation to and from the consumption lounge.

For additional context, there are nine licensed cannabis retailers within the unincorporated area of Monterey County: six are in the northern area of Monterey County in District 2 and three are in the Carmel Valley area of District 5.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel, District Attorney, Housing and Community Development, Health Department, Sheriff Office and the California Highway Patrol were involved in the preparation of the report.

FINANCING:

Monterey County's Cannabis Program is funded in County Administrative Office - Department 1050, Intergovernmental and Legislative Affairs Division - Unit 8533, Cannabis. The proposed recommendations will not incur additional expenses to the Program.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

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

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Attachments:

- A. Jurisdictions Permitting Cannabis Consumption Lounges
- B. California's Clean Air Laws Infographic
- C. Tracking Tobacco Laws, A California Digest