



## Board Report

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**File #:** ORD 19-019, **Version:** 1

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### **REF150048 - Outdoor Commercial Cannabis Cultivation Pilot Program**

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

**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 ordinances that require subsequent discretionary permits that are themselves subject to the California Environmental Quality Act (CEQA) review, and therefore are statutorily exempt from CEQA pursuant to Business and Professions Code Section 26055(h);
- b. Adopt an ordinance (**Attachment F**) adding Chapter 20.69 to the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) to create a pilot program establishing land use regulations for limited outdoor commercial cannabis cultivation in the Big Sur Land Use Plan area (subject to certification by the California Coastal Commission);
- c. Adopt an ordinance (**Attachment E**) adding Chapter 21.69 to Title 21 (non-coastal zoning ordinance) of the Monterey County Code to create a pilot program establishing land use regulations for limited outdoor commercial cannabis cultivation in the Carmel Valley Master Plan and Cachagua Area Plan;
- d. Certify that the ordinance establishing the outdoor commercial cannabis cultivation pilot program in the Big Sur Land Use Plan area (item “b” above) is intended to be carried out in a manner fully in conformity with the Coastal Act; and
- e. Direct staff to transmit the ordinance (item “b” above) to the California Coastal Commission for certification.

Staff has attached alternative versions of the ordinances for consideration by the Board of Supervisors: 1) Board Cannabis Committee recommended ordinances (**Attachments B and C**); 2) Planning Commission recommended ordinances (**Attachment D**); and staff recommended ordinances (**Attachments E and F**). The staff recommended ordinances incorporate some, but not all, of the Planning Commission recommendations. It is recommended that the Board take action on final ordinances before July 1, 2019 in order to apply the statutory exemption from CEQA that expires on July 1, 2019.

#### SUMMARY/DISCUSSION:

The Board of Supervisors and the Cannabis Committee provided direction for staff to draft ordinances amending Titles 20 and 21 of the Monterey County Code (coastal and non-coastal zoning ordinances) to establish a pilot program for permitting limited outdoor cannabis cultivation in the Big Sur Land Use Plan area (coastal), Carmel Valley Master Plan area (non-coastal), and Cachagua Area Plan area (non-coastal). The ordinances staff has drafted would establish a five-year pilot program for permitting and regulation of limited outdoor cannabis cultivation only in the three identified planning areas within Supervisorial District 5, and only

on lots that could provide proof that they historically cultivated cannabis.

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 five-year period; to provide an opportunity for those that previously cultivated in the subject areas an opportunity to participate in the legalized cannabis market; and to protect public health, safety, welfare and the environment. These regulations are designed to minimize nuisances, protect neighborhood character, and protect the environment. Qualifications and regulations have been developed with feedback from the Board Standing Cannabis Committee, the Planning Commission, cannabis industry representatives, the Land Use Advisory Committees (LUAC), the Agricultural Advisory Committee (AAC), public comments, and with guidance from County staff involved in permitting and enforcement.

As recommended, an Administrative Permit (Inland - Carmel Valley and Cachagua) or Coastal Administrative Permit (Coastal- Big Sur) would be required to allow commercial outdoor cannabis cultivation up to 10,000 square feet of canopy on “Qualified Properties.” Administrative Permits and Coastal Administrative Permits are discretionary permits that include review by all relevant County departments, environmental review, and notification to neighbors and the public, providing the opportunity for public involvement in permitting of individual properties under this pilot program in each case.

Draft ordinances were considered by the Board Cannabis Committee and the Planning Commission at noticed public hearings. Recommendations from the Planning Commission include: reduced setback standards, additional zoning designations where cultivation would be allowed, revised lot size/canopy standards, and a requirement of an onsite resident. Staff believes that some of the Commission’s recommendations would change the program in a manner that does not reflect what we understand to be the Board’s direction. However, staff finds that the Commission also recommended a number of changes that improve the program.

Staff recommends ordinances that incorporate most, but not all of the Planning Commission recommended changes. All three versions of the regulations are attached for consideration by the Board of Supervisors: 1) Board Cannabis Committee (**Attachments B and C**); Planning Commission (**Attachment D**); and staff (**Attachments E and F**). The attached table (**Attachment A**) provides a quick reference of the main regulatory differences between the three versions.

The Board may act on any of the three ordinances before them at the hearing or request additional modifications to any of the ordinances. Substantive changes will require continuing the hearing for consideration of revised ordinances. It is recommended that the Board take action on final ordinances before July 1, 2019 in order to apply the CEQA statutory exemption. Action on cannabis ordinances after July 1, 2019 may require separate environmental analysis for the ordinance itself, which would delay consideration of the pilot program.

Staff finds that adding this program will create additional challenges for cannabis enforcement staff. However, outdoor grows are subject to the County’s cannabis tax and this potential additional revenue could help offset enforcement costs. The Board Cannabis Committee direction included making the program revenue neutral. If the Program is approved, staff recommends that the Board consider amending Chapter 7.100 of the Monterey County Code (by separate ordinance) to establish a tax rate for outdoor commercial cannabis cultivation that will cover projected resource and staffing costs.

Initial resource and staffing cost estimates from each involved County Department is approximately \$1,000,000 total. Estimates on potential tax revenues are based on projected maximum allowable canopy, and projected

maximum allowable canopy varies between the three recommended ordinances. The ordinances range from the Cannabis Committee version being the most restrictive (estimated 400,000 total square feet of grow) to the Planning Commission recommended version being most permissive (estimated 640,000 total square feet of canopy). Lower total canopy area would require higher tax rates if this program is to fully offset the estimated implementation costs (e.g., enforcement). There is also the potential with this developing industry that allowing outdoor cultivation will increase challenges with illegal cultivation that will further impact Cannabis Program resources.

### **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.

### **Coastal Commission Certification**

The ordinance applicable to the Big Sur Land Use Plan area within the coastal zone is subject to review and certification by the California Coastal Commission before it is 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.

### **Tax Revenue and Cannabis Program Resources**

There are an estimated 100 heritage growers in the Big Sur, Carmel Valley, and Cachagua areas. Industry representatives indicate they are aware of about 94, but they believe others are present that they cannot verify. Assuming that approximately 20% will not pursue a permit or will not qualify for a permit under the pilot program regulations, there would be a potential of 75 permits.

Staff estimates that out of 75 permits, approximately 8% will have a canopy of 2,500 square feet ( $75 \times 8\% = 6$  permits @ 2,500 sq ft = 15,000 square feet), 18% will have a canopy of 5,000 square feet ( $75 \times 18\% = 13$  permits @ 5,000 sq ft = 65,000 square feet), and 75% will have a canopy of 10,000 square feet ( $75 - 6 - 13 = 56$  permits @ 10,000 sq ft = 560,000 square feet). This equates to a potential maximum canopy of 640,000 square feet (15,000 + 65,000 + 560,000).

Applying a tax rate of \$1.56/sf using the 640,000 square feet of canopy would generate revenue of about \$1 million. However, staff finds that the grow area will likely be much less (as we experienced with indoor grows); and therefore, staff recommends applying a tax rate of \$2.50/sf as a starting point until we are able to see actual numbers. The higher rate will put the County in a better position to receive revenue that fully covers costs of implementing the program.

Processing an ordinance to amend Chapter 7.100 to set the outdoor cultivation tax rate would take a few months, which is comparable to the time it will take for processing of the coastal ordinance by the Coastal Commission. Staff would target to have the program up and running in time for the 2020 outdoor growing

season (starting March/April 2020). Meanwhile, those interested in outdoor grow could start to apply, but would not be able to legally start growing until they have received permit approval. The timing for this will intersect with indoor grow applications and State licensing. As such, staff anticipates utilizing outside contract services to assist with processing these permits. On June 3, 2019, the Board supported additional funding in the FY 2019/20 Budget for Planning (\$200,000) and Building (\$250,000) outside permit services.

Staff has identified an initial list of recommended resource allocations at a cost of \$992,823 (**Attachment J**). The resource allocations estimates are based on projected incremental increase in proactive enforcement and program oversight resulting from expanding efforts in the pilot program area. Costs associated with permitting of and inspection of cannabis activities pursuant to the proposed program are projected to be recovered through collection of permit and inspection fees. Projected resource needs include:

- CAO Cannabis Program - Part time consultant
  - Cost - \$40,000 January through June 2020
- District Attorney - Overtime
  - Cost - \$34,064 January through June 2020
- Sheriff Office - Overtime, services, and training
  - Cost \$300,290 January through June 2020
- Resource Management Agency - 2 Code Compliance Inspectors and 2 vehicles
  - Cost \$332,325 for Fiscal Year 19-20
- Treasurer/Tax Collector - 1 Accountant Technician
  - Cost \$136,144 for January through June 2020
- Optional Moss Landing Marine Labs water quality monitoring services for Environmental Data and Analysis (water sampling in pilot program area)
  - Cost \$150,000 per year for 5 years to begin January 2020

Upfront costs of establishing and administering the pilot program have been provided with existing staff and resources in the FY 18-19 adopted budget. Tasks include, but are not limited to, ordinance preparation, preparation of related documents and materials, attendance at meetings, correspondence, public information and related efforts. Staff impacted: Cannabis Program, Office of the County Counsel, Treasurer-Tax Collector, and the Resource Management Agency.

The Cannabis Program believes that the pilot program needs further analysis once a pilot program is fully operational to identify appropriate resources needed.

### **Performance Measures**

The Cannabis Program has created a minimal list of performance measures for the current industry. A list of suggested performance measures is attached as **Attachment K**. The Cannabis Program staff is limited in time and bandwidth to complete all expected tasks. The performance measurement data and its outcomes will be considered a priority, but staff may be limited in time to provide measurement data on all requested topics.

### OTHER AGENCY INVOLVEMENT:

This report has been drafted by the Resource Management Agency and reviewed by the Office of County Counsel.

In drafting the ordinances, staff consulted multiple times with industry representatives, met with each of the

affected communities through the Land Use Advisory Committees (LUACs), 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. Each of the consulted entities and committees have expressed support for the pilot program, and their comments or recommendations are addressed within the ordinances. Opposition to the program has also been expressed by some individuals that participated in the meetings. Comments and recommendations are summarized below.

*Industry: Support with changes.*

Industry representatives favor the Planning Commission recommendation. They would also like to see policies for a transfer of cultivation credit that would allow those who have moved from the previously cultivated site since 2016 or who do not qualify under the adopted regulations to relocate onto a larger qualifying property increasing the maximum canopy allowed on the receiving site.

*Opposition: Recommend denial or postpone approval and conduct CEQA review on the ordinance.*

Concerned citizens have attended meetings and written multiple letters objecting to the pilot program due to concerns with safety in remote areas of the County; lack of Sheriff presence and long response times; potential for environmental damage including impacts on wildlife and water supply; and potential for creation of odors and other nuisances in residential communities.

*LUACs: All support the pilot program provided concerns are addressed.*

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.
- Provide robust security and enforcement. Sheriff presence in these areas is limited and an increased presence is requested, particularly in Cachagua.
- 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.
- 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.

*Agricultural Advisory Committee (AAC): Support Pilot program with revisions.*

The AAC recommended approval of the pilot program with the following recommendations:

- Maintain the 10 acre minimum lot size.
- Include the Farmland zoning district within the Cachagua Area Plan.
- Allow farmers who have existing operator identifications with the Department of Food and Agriculture to qualify for the pilot program.
- Invest cannabis funds in affected communities.
- Include regulations for cultivation of lands on slopes.
- Create a residency requirement to minimize outside influences in the affected areas.

*Board Cannabis Committee: Recommend proceeding to Planning Commission with minor changes.*

The Cannabis Committee reviewed a draft ordinance establishing the outdoor cultivation pilot program including comments from the LUACs, AAC, and industry representatives, and recommended minor revisions to the ordinance before continuing to the Planning Commission for a recommendation to the Board of Supervisors. The recommended changes have been incorporated in all three versions of the draft ordinances. Those changes included: a consistent setback of 1,000 feet from playgrounds, youth centers, and similar uses throughout the ordinance; prohibiting generators as a power source; and defining “lot” within the ordinance. The Cannabis Committee also expressed a willingness to consider reduced minimum lot size requirements and setbacks.

*Planning Commission: Recommended Approval of a modified ordinance.*

The Planning Commission requested that the purpose of the ordinance be expanded to include providing opportunities for those who historically cultivated cannabis in Monterey County. Along that line of reasoning, the Planning Commission recommended changes to make the pilot program inclusive of the majority of sites that were previously cultivated. Changes recommended by the Planning Commission included:

1. Remove the 10-acre minimum lot size requirement (no lot size restriction).
2. Include Grazing Lands (PG, RG) and Farmlands (F) in the list of qualifying zoning districts.
3. Remove the word “*medicinal*” from the previously cultivated criteria.
4. Reduce setbacks required between cannabis sites and the nearest offsite structure from 1,000 feet to 50 feet *or more as needed* and allow the setback to be reduced with written consent of the neighboring property owner(s).
5. Reduce the required front setback from 100 feet a road to 50 feet from a public road;
6. Remove the ‘*inspection by air*’ language.
7. Require an onsite resident unless the property had a dwelling that was destroyed by a disaster within the last 5 years.

*Staff Recommendation:*

Staff has provided recommended ordinances that incorporate Planning Commission recommend items 1, a portion of 4, 5, 6, and a portion of 7 from the list above. The staff recommended version of the ordinances include a 200-foot setback as a compromise on the setback required from the nearest offsite structure (item 4) and eliminate the exception for “destroyed structures” from the resident requirement (item 7). The table (**Attachment A**) provides a quick reference to the primary differences in the three ordinances.

FINANCING:

Implementation of new ordinances is anticipated to impact services, which staff believes will necessitate additional staff. If the pilot program regulations are adopted, staff time will be allocated from the current Cannabis Program resources and this could impact the General Fund. The Cannabis Program has estimated resource and staffing costs; however, staff requests that if the pilot program is adopted, the Cannabis Program is afforded the opportunity to return to the Board of Supervisors with an adjusted augmentation request based on the number of permit applications received, cultivation locations, and the cultivation square footages are evaluated once the program is operational.

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

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Reviewed by: Brandon Swanson, Interim Chief of Planning

Approved by: Carl P. Holm, RMA Director

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

- Attachment A - Ordinance Comparison Table
- Attachment B - Cannabis Committee Inland Ordinance
- Attachment C - Cannabis Committee Coastal Ordinance
- Attachment D - PC Recommendation for Inland & Coastal Ordinances
- Attachment E - Staff Recommended Inland Ordinance
- Attachment F - Staff Recommended Coastal Ordinance
- Attachment G - Advisory Committee Recommendations
- Attachment H - Correspondence
- Attachment I - Land Use Maps for Big Sur, Carmel Valley, and Cachagua
- Attachment J - Cannabis Program Resource/Funding Estimates
- Attachment K - Cannabis Program Performance Measures

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; 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