



County of Monterey

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

Board Report

File #: RES 16-006, **Version:** 1

Consider adopting a Resolution to:

Issue a report pursuant to Government Code section 65858 describing the measures taken to alleviate the condition which led to the adoption of Interim Ordinance No. 5254, as extended by Interim Ordinance No. 5256, temporarily prohibiting the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of Monterey County.
(Medical Marijuana Interim Ordinance - REF150047)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Adopt a Resolution issuing a report pursuant to Government Code section 65858, describing the measures taken to alleviate the condition which led to the adoption of Interim Ordinance No. 5254, as extended by Interim Ordinance No. 5256, temporarily prohibiting the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of the County.

SUMMARY:

On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 establishing a 45-day ban on the collective and cooperative cultivation of medical marijuana and medical marijuana dispensaries in the unincorporated areas, with some exceptions, while the County develops land use regulations to appropriately address the threat to the public health, safety, and welfare from these uses. On July 28, 2015, the Board of Supervisors issued a report and adopted Interim Ordinance No. 5256 extending the temporary ban on collective and cooperative cultivation of marijuana and medical marijuana dispensaries for an additional 10 months, 15 days, until and through July 5, 2016. Under the interim ordinance, the use of real property for the collective or cooperative cultivation of marijuana for medical purposes or for medical marijuana dispensaries is prohibited with few exceptions. (See Sections 4 and 5 of the ordinance.)

Pursuant to Government Code Section 65858, the County is required to issue a report 10 days prior to the expiration of the interim ordinance or any extension of the interim ordinance, describing the measures taken to alleviate the condition which led to the adoption of the ordinance. On February 9, 2016, staff provided a status report to the Board of Supervisors on the progress of drafting permanent ordinances regarding medical marijuana. At that meeting, the Board directed staff to return to the Board of Supervisors for consideration of amendments to the interim ordinance before March 1, 2016.

In order to meet this timeline, a special meeting of the Board of Supervisors has been called on Tuesday, February 16, 2016 to consider adopting a resolution issuing the required report. A separate special meeting of the Board of Supervisors is set for Friday, February 26, 2016, to consider amending and extending the interim ordinance. As soon as feasible after the February 11, 2016 ad hoc committee meeting, staff will distribute proposed amended interim ordinance language.

Measures taken to alleviate the condition which led to the adoption of the interim ordinance include the following:

- Since July 2015, RMA staff has worked with staff from multiple County agencies and an ad hoc

committee of the Board of Supervisors to consider development of medical marijuana regulations. This group has held seven ad hoc committee meetings. This work has included consultation with multiple agencies as well as outside experts in the field.

- In October 2015, the State enacted the Medical Marijuana Regulation and Safety Act (AB266, AB243, SB643). On February 3, 2016, the Governor signed AB21, urgency legislation which amended the MMRSA to eliminate a March 1, 2016 date for cities and counties to adopt regulations while affirming cities' and counties' authority under the police power to adopt medical marijuana regulations. The draft regulations developed take into account the definitions and standards provided in the new State law.
- Staff has scheduled a public meeting at 3:30 p.m. on Tuesday February 16, 2016 in the Monterey Room in the County Government Center, located at 168, West Alisal Street, 2nd Floor, in Salinas, to review and discuss the draft regulations with any interested members of public.
- Preliminary draft ordinances were released for public review with the February 9, 2016 staff report to the Board of Supervisors; these are preliminary drafts that could undergo change in the course of stakeholder meetings, environmental review, and the public hearings on the regulations.
- Final Board hearings on the permanent regulations are targeted for June 2016. Adoption of the permanent regulations is subject to completion of stakeholder meetings, environmental review, and public hearings (Planning Commission, Board of Supervisors) on the regulations.

A draft Resolution issuing a report describing the steps taken to alleviate the conditions which led to adoption of the interim ordinance is attached as Exhibit A.

DISCUSSION:

Starting with adoption of the interim urgency ordinance on July 7, 2015, significant milestones have occurred including the passing of a new state medical marijuana law, development of draft ordinances, release of draft ordinances with a status report to the Board of Supervisors, and scheduling of public meetings to discuss the draft ordinances. In addition, staff is looking at the remaining steps needed to prepare regulations for Board consideration including conducting public meetings, environmental review, and Planning Commission review and recommendation. The following discussion provides more detail for these milestones.

Interim Urgency Ordinance

The Board of Supervisors adopted Interim Urgency Ordinance No. 5254, as extended by Ordinance No. 5256, which is effective through July 5, 2016. Government Code Section 65858(a) permits the Board, following notice of public hearing and upon a four-fifths vote, to extend Interim Ordinance No. 5254 for one additional year, provided that the Board finds that there is a current and immediate threat to the public health, safety, or welfare and that the approval of land use entitlements would result in that threat to the public health, safety, or welfare. As such, with the appropriate process and findings, the Board could extend the interim ordinance until and through July 5, 2017, if needed. At the February 9, 2016 Board meeting, the Board directed staff to return to the Board prior to March 1, 2016 to consider expansion of the exemptions to the ordinance. A special meeting on February 26, 2016 has been called for this purpose. At that meeting, the Board could consider modification to and extension of the interim ordinance.

Under Interim Ordinance No. 5254, no new medical cannabis businesses are allowed until permanent regulations are adopted. Staff is working toward having a permanent ordinance adopted before the July 5, 2016 sunset date of the interim ordinance. However, coastal regulations are likely to take longer than one year to go into effect because such regulations would require certification by the Coastal Commission.

State Law

In October 2015, Governor Brown signed into law Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 (collectively the “Medical Marijuana Regulation and Safety Act”). This new law establishes a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, requires state licensing for “commercial cannabis activities,” and directs certain state agencies to develop specific rules and regulations for the implementation of the law. According to current projections, implementation of the regulations are not anticipated until 2018. The law provides flexibility for local governments to adopt bans or to adopt their own regulations that are “at least as stringent” as state law. The current draft ordinances have been modeled after the framework provided in the new state law; however, specific regulations, to be developed at the state level, are unknown and are being addressed locally in the interim.

Draft Ordinances

With the passage of the Medical Marijuana Regulation and Safety Act, many jurisdictions around the state are currently working to develop new medical marijuana regulations. Creation of a new County regulatory structure for this industry has been a larger task than originally anticipated. With collaboration from the Sheriff’s Office, the District Attorney’s Office, the Treasurer-Tax Collector’s Office, the Assessor’s Office, the Health Department, the Agricultural Commissioner, the CAO’s Office, County Counsel’s Office, Economic Development, and the Resource Management Agency, and with direction and input from the Board’s ad hoc committee, staff has drafted regulations that attempt to address a variety of issues and concerns surrounding this industry. The draft regulatory concept currently includes three local ordinances, which include:

1. Draft ordinances amending zoning regulations (Title 20-Coastal and Title 21-Inland) to establish medical cannabis uses allowed in specified zoning districts with approval of a Use Permit in each case. These ordinances focus on land use and environmental issues.
2. A draft ordinance that requires an annual business permit to operate any type of commercial medical cannabis business. The business permit requirements focus on operational regulations and include inspection requirements specific to the needs of the Health Department, the Agricultural Commissioner, and the Sheriff’s Office; and
3. A draft ordinance establishing a new business license requirement for commercial cannabis businesses that operate in the unincorporated areas of the County. This business license ordinance is conceived to initially apply only to commercial cannabis businesses. The business license would be a final step in the permitting processes that ensures that all required permits, licenses, and entitlements have been obtained, and it would create a register of businesses permitted to operate in Monterey County.

The draft ordinances released to the public are still being refined in coordination with the ad hoc committee and may undergo subsequent revisions as a result of the upcoming stakeholder process, further County Counsel review, environmental review and public hearings. The draft regulatory structure has raised several important questions about staffing levels and funding sources for new staff. Staff is in the process of gathering information on suggested staffing levels to accommodate these new duties and potential funding sources for the added costs.

Next Steps

Staff has scheduled the first public meeting to provide the opportunity for public comment on the draft ordinances. The meeting is scheduled at 3:30 p.m. on February 16, 2016 in the Monterey Room located at 168 W. Alisal Street, 2nd Floor, in Salinas. Additional meetings may be scheduled as necessary. Staff is also

considering scheduling a workshop at the Planning Commission prior to bringing the ordinance to a public hearing at the Planning Commission for a formal recommendation. After further refinement of the ordinances resulting from the outreach process, environmental review pursuant to the California Environmental Quality Act (CEQA) will be conducted. It is the intent of staff to present draft ordinances for Board consideration in June of this year. Staff will continue to make these regulations a priority and welcomes any feedback on the draft ordinances.

OTHER AGENCY INVOLVEMENT:

In addition to consultation with the ad hoc committee of the Board, the following agencies have been participating in preparation of ordinances:

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

FINANCING:

Funding for staff time associated with drafting these regulations, including providing this status report, is included in each Department's FY15-16 Adopted Budget. Implementation of new regulations is anticipated to impact services, which staff believes will necessitate additional staff. A total needs assessment is dependent on final regulations that are adopted.

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Approved by: Mike Novo, Director, RMA-Planning, ext. 5192

Carl P. Holm, Director Resource Management Agency, ext. 5103

This report was reviewed by Jacqueline R. Onciano, RMA Services Manager

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

Attachment A Draft Resolution

cc: Front Counter Copy; California Coastal Commission (if applicable); Jacqueline Onciano, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; Jeff Atkinson; Aaron Johnson; Michael Groves; Todd Bessire; Michael Bitar; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Jen Linney; Valentia Piccinini Project File REF150048

