



Board Report

File #: RES 18-029, **Version:** 1

REF150048 - Inland and Ref160042 - Coastal
Commercial Cannabis (Marijuana) Regulations
Public hearing to consider adopting:

- a. An ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County;
- b. A resolution amending the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site;
- c. An ordinance amending Title 21 (non-coastal zoning ordinance) to remove the 1,500-foot setback between commercial cannabis retailers and instead to require a finding of public convenience or necessity for all commercial cannabis retailer Use Permits, and to remove the 600-foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers and youth centers for all types of commercial cannabis activities; and
- d. A resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 1,500-foot setback between commercial cannabis retailers and instead require a finding of public convenience or necessity for all commercial cannabis retailer Coastal Development Permits, and to remove the 600-foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities.

(Item 4 will only be considered if the ordinance amending the Monterey County Coastal Implementation Plan Parts 1 and 2, Title 20 is adopted (described in Item 1 above)).

Location: County-wide

Proposed CEQA action: Statutorily exempt pursuant to Business and Professions Code Section 26055(h) (CEQA exemption for the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review).

RECOMMENDATION:

Staff recommends that the Board of Supervisors:

- a. Acknowledge receipt of the California Coastal Commission resolution approving the Monterey County Local Coastal Program (LCP) Amendment No. LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance);
- b. Find the project is the adoption of local 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);
- c. Adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County;
- d. Adopt a resolution amending the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site;
- e. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to remove the 1,500-foot setback between commercial cannabis retailers and instead require a finding of *public convenience or necessity* for all commercial cannabis retailer Use Permits, and to remove the 600-

foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers and youth centers for all types of commercial cannabis activities;

- f. Adopt a resolution of intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 1,500-foot setback between commercial cannabis retailers and instead require a finding of *public convenience or necessity* for all commercial cannabis retailer Coastal Development Permits, and to remove the 600-foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities;
- g. Certify that the amendments to the Local Coastal Program (action items “c” and “d” above), and the Resolution of Intent to amend the Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) modifying setbacks (action item “f” above) are intended to be carried out in a manner fully in conformity with the Coastal Act;
- h. Direct staff to transmit the amendments to the Local Coastal Program (action items “c” and “d” above) for confirmation that the amendments are consistent with the action taken by the Coastal Commission of February 7, 2018 approving Local Coastal Plan Amendment number LCP-3-MCO-18-0004-1; and
- i. Direct staff to transmit the Resolution of Intent to modify the Coastal Implementation Plan, Part 1 to the Coastal Commission for certification (action item “f” above).

For procedural reasons, the staff recommended action item “f” (Resolution of Intent to adopt an ordinance modifying setback requirements) would be considered only if the Board votes affirmatively on staff recommended action item “c” (adoption of an ordinance establishing commercial cannabis regulations in the coastal zone). Additional details on the procedures are described below.

SUMMARY:

The item before the Board today represents actions on cannabis ordinances in two different places of the approval process.

One set of actions will memorialize the recent California Coastal Commission (“CCC”) acceptance of cannabis regulations in the Coastal Zone. These recommended actions (staff’s recommended action items “c” and “d”) include an ordinance establishing regulations for all commercial cannabis activities in the coastal unincorporated areas of the County, and a resolution revising to the text of the North County Land Use Plan to provide regulatory authority to consider permits for commercial cannabis activities at the former Kaiser National Refractories site. The County currently does not have specific regulations for commercial cannabis activities formally adopted in the coastal zone. The CCC certified the ordinance and LUP text amendment on February 7, 2018, and staff is returning to the Board for final action. If adopted by the Board and confirmed by the CCC, this action would establish regulations for commercial cannabis activities applicable in the coastal zone. This would be the final step to certifying these coastal regulations.

The second set of actions involve modification of setback regulations in both the inland and coastal cannabis ordinances. This includes an ordinance amending the inland zoning regulations (Title 21) and a Resolution of Intent to adopt an ordinance amending the coastal regulations (Title 20), both modifying setback requirements for commercial cannabis activities in the unincorporated areas. Adopting a Resolution of Intent would be the first step in the Coastal Commission certification process.

The reason for the two-part action is that Resolution of Intent considered in the second part of the proposed action would modify the ordinance being considered for adoption in the first part of the proposed actions.

DISCUSSION

Certified LCP Amendments (first part of proposed action):

The proposed Local Coastal Program (LCP) Amendments are returning to the Board of Supervisors to complete the process of adopting commercial cannabis regulations that are applicable in coastal unincorporated areas of Monterey County. Pursuant to the Coastal Act, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include:

- The Planning Commission hold a noticed public hearing and make a recommendation to the Board;
- The Board hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the CCC for certification;
- The Board take subsequent final action on the ordinance after the CCC acts (**recommended Board action items “c” and “d”**); and
- The CCC makes a final determination to confirm the County’s action and officially codify the LCP amendments.

On November 15, 2017, the Planning Commission held a public hearing to make a recommendation to the Board on the proposed cannabis regulations. The Commission recommended that Board adopt the ordinance establishing regulations for commercial cannabis activities in the Coastal Zone with suggested modifications. The Commission also recommended that the Board consider a text amendment to the North County Land Use Plan (LUP) and the amendment to the Coastal Implementation Plan, Part 2 affecting the property located at 7697 Highway 1, Moss Landing (the Former Kaiser National Refractories site) separately from the ordinance amending the Coastal Implementation Plan, Part 1 (**Exhibit D**).

On December 5, 2017, the Board of Supervisors adopted a Resolution of Intent to adopt an ordinance establishing zoning regulations for commercial cannabis activities in the coastal unincorporated areas and amend the text of the North County Land Use Plan (**Exhibit E**).

Following adoption by the Board, the Resolution of Intent was forwarded to the CCC for certification. On February 7, 2018, the CCC approved the proposed amendments as submitted (**Exhibit F**).

These amendments are now returning to the Board for final local action. This action will put into place regulations for commercial cannabis activities in the coastal zone.

Ordinances Amending Setbacks (Second Part of proposed action):

During the period of time that the Local Coastal Program Amendments were being reviewed by the CCC, County staff was directed by the Planning Commission and Board to consider amending setback requirements. Staff has analyzed the issue and has prepared draft ordinances to amend the setbacks required for commercial cannabis activities.

This action to amend setbacks includes two ordinances, one in the inland area and one in the coastal area. For the coastal regulations, the amendment would be to the regulations considered by the Board in the first part of the proposed actions described above. Due to procedural requirements for Local Coastal Program amendments, the coastal ordinance requires consideration of a Resolution of Intent to adopt the ordinance amending certified regulations. Procedurally, the consideration of the Resolution of Intent would occur only if the Board adopts the ordinance in the first part. Consideration of the ordinance amending the inland regulations can be considered at the hearing without a Resolution of Intent or additional certification procedures through the CCC. The proposed changes to Title 20 and Title 21 are the same.

As drafted, the proposed ordinances would:

- Remove the 1500-foot setback required between retailers, and instead require a finding of *public convenience or necessity* for all retailer Use/Coastal Development permits;
- Replace “public parks” with “playgrounds” in the requirement for the 600-foot setback from all commercial cannabis activities; and
- Update setbacks for all commercial cannabis activities consistent with state law including deleting the 600-foot setback from drug recovery facilities and adding a 600-foot setback from child care centers (Interchangeable with the term “Day Care Centers”) inclusive of transitional kindergartens, and youth centers.

These proposed revisions would align the County’s requirements with current state law, and avoid impacts to youth oriented uses and facilities. A summary of the proposed setbacks in the draft ordinances are as follows: 600-feet from all the following:

1. A school providing instruction in kindergarten or any grades 1 through 12;
2. Child care centers (also known as “Day Care Centers”, and including transitional kindergarten);
3. Youth centers; and
4. Playgrounds.

All setbacks apply only to operations in existence at the time the permit is being considered and, other than for playgrounds, are measured from property line to property line. Distance from playgrounds would be measured from the boundary of the playground facilities.

In addressing these setback issues, County staff has considered and analyzed several options for promoting healthy business competition, while still being sensitive to health, safety, and social issues that may arise from commercial cannabis activities. Analysis included the following: research of state law and licensing regulations; research of reports published by other states, jurisdictions, and institution on health and safety impacts of cannabis activities; and discussions with representatives from State Parks, Monterey County Public Health, Monterey County Sheriff’s Office.

Planning Commission Recommendation: On February 14, 2018, the Planning Commission held a public hearing to make a recommendation to the Board on the ordinances amending the setback requirements. At the hearing, the Commission adopted a Resolution recommending that the Board adopt the ordinance amending the inland zoning ordinance (Title 21) and adopt a Resolution of Intent to amend the coastal zoning ordinance (Title 20) by a vote of 7 ayes, 2 noes, and 1 abstention. The proposed ordinance/Resolution of Intent before the Board reflect the edits suggested by the Commission. A more detailed discussion is provided in **Attachment A**, including further explanation of staff research and specific modification suggested by the Planning Commission at the February 12th hearing.

OTHER AGENCY INVOLVEMENT:

The following agencies and departments have been involved in preparation of the draft ordinances:

- Resource Management Agency
- CAO’s Office
- Health Department/Environmental Health Bureau
- Economic Development Department
- Sheriff’s Office

- Treasure/Tax Collector
- Agricultural Commissioner's Office
- District Attorney's Office
- County Counsel's Office

FINANCING:

Funding for staff time associated with drafting these amendments is included in each Departments FY17-18 adopted Budgets.

Adoption and implementation of these amended regulations is not anticipated to significantly impact services beyond those previously considered in adopting the original commercial medical cannabis regulations in 2016. Effectively, the size of the program will not be expanding because these ordinance amendments do not remove the zoning restrictions that limit where and how cannabis activities may occur.

A separate report is being prepared by the CAO's Office for how cannabis tax revenues may be used to help implement the cannabis program, including enforcement.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents an effective response to our County customers' needs. Processing these amendments will allow the County to process applications in a timely manner in accordance with new state law.

Check the related Board of Supervisors Strategic Initiatives:

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

Prepared by: Craig W. Spencer, Senior Planner, ext. 5233

Reviewed by: Brandon Swanson, RMA - Planning Services Manager

Approved by: Carl P. Holm, RMA Director

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

Attachment A - Detailed Project Discussion

Attachment B - Coastal Commission certified Ordinance amending Title 20 (clean version)

Attachment C - Coastal Commission certified Ordinance amending Title 20 (redline version)

Attachment D - Resolution amending the text of the North County Land Use Plan:

- Exhibit 1 - Proposed North County Land Use Plan text amendments - clean
- Exhibit 2 - Proposed North County Land Use Plan text amendments - redline

Attachment E - PC Recommendation on ordinance and LUP text amendment (Res.17-047)

Attachment F - BOS Res. of Intent to adopt ordinance and LUP text amendment (Res.17-501)

Attachment G - CCC res. approving the Monterey County LCP Amendment

Attachment H - Draft Ordinance amending Title 21 - setback requirements (clean version)

Attachment I - Draft Ordinance amending Title 21 - setback requirements (redline version)

Attachment J - Draft Resolution of Intent to adopt an ordinance amending (Title 20) - setback requirements:

- Exhibit 1 - Draft Ordinance amending Title 20 - setback requirements (clean version)
- Exhibit 2 - Draft Ordinance amending Title 20 - setback requirements (redline version)

Attachment K - PC Recommendation on ordinance amending setback requirements (Res.18-007)

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; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; 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; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Pharmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Alex Lorca; John Bridges; Michael Gilson; Planning File REF150048