



Board Report

File #: PC 18-105, Version: 1

REF150048 - CANNABIS ENTITLEMENTS AND DISPENSARY SETBACKS

Public hearing to consider making a recommendation to the Board of Supervisors to adopt an ordinance to amend Title 21 (non-coastal zoning ordinance) and a resolution of intent to adopt Title 20 (coastal zoning ordinance) to:

- a. Change commercial cannabis activities (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing) from a conditional use allowed subject to a Use Permit/Coastal Development Permit in each case within specified zoning districts, to a principal use allowed subject to an Administrative Permit/Coastal Administrative Permit in each case within the same specified zoning districts;
- b. Create an exception to the 1500-foot setback required between commercial cannabis retailers if applicant provides proof based on substantial evidence that special circumstances exist ("Minor Exception"); and
- c. Require a Use Permit/Coastal Development Permit for a proposed retail facility that does not comply with the 1,500 foot setback from another approved retail facility and when special circumstances do not exist ("Major Exception").

Proposed CEQA Action: Statutorily exempt pursuant to Business and Professions Code section 26055(h).

PROJECT INFORMATION:

Planning File Number: REF150048 (Cannabis Regulations)

Project Location: County-wide

Plan Area: County-wide

RECOMMENDATION:

It is recommended that the Planning Commission recommend the Board of Supervisors:

- a. Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA the pursuant to Business and Professions Code Section 26055(h).
- b. Adopt an ordinance to amend Title 21 (non-coastal zoning ordinance) of the Monterey County Code to:
 - i. Change commercial cannabis activities (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing) from a conditional use allowed subject to a Use Permit in each case within specified zoning districts, to a principal use allowed subject to an Administrative Permit in each case within the same specified zoning districts;
 - ii. Create an exception to the 1500-foot setback required between commercial cannabis retailers if applicant provides proof based on substantial evidence that special circumstances exist ("Minor Exception"); and
 - iii. Require a Use Permit for a proposed retail facility that does not comply with the 1,500 foot setback from another approved retail facility and when special circumstances do not exist ("Major Exception").
- c. Adopt a Resolution of Intent to adopt an ordinance to amend the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) of the Monterey County

Code to:

- i. Change commercial cannabis activities (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing) from a conditional use allowed subject to a Coastal Development Permit in each case within specified zoning districts, to a principal use allowed subject to a Coastal Administrative Permit in each case within the same specified zoning districts;
- ii. Create an exception to the 1500-foot setback required between commercial cannabis retailers if applicant provides proof based on substantial evidence that special circumstances exist (“Minor Exception”); and
- iii. Require a Coastal Development Permit for a proposed retail facility that does not comply with the 1,500 foot setback from another approved retail facility and when special circumstances do not exist (“Major Exception”).

Although proposed together in each ordinance, the Planning Commission may consider the change in permit requirements and modification to retail facility setbacks individually. Changes to permit requirements can proceed independent of the retail facility setback amendments and vice versa.

SUMMARY:

On February 14, 2018, staff presented draft ordinances to the Planning Commission that would have deleted the 1,500-foot setback and instead required a review of public convenience and necessity. The Board found the public convenience and necessity criteria unclear and directed staff to return to the Cannabis Committee for additional discussion and direction. Staff revised the retailer setback requirements as directed by the Cannabis Committee. Since there are substantial changes, staff is returning to the Planning Commission for review and recommendation. At this point, based on what has been learned from the process to date, staff also proposes changing the land use entitlement process from Use/Coastal Development Permits to Administrative/Coastal Administrative Permits for all commercial cannabis operations (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing).

The draft ordinances as currently proposed (Inland and Coastal) would amend the County’s cannabis regulations to:

- 1) Change the type of permit required for commercial cannabis activities (Includes: retailer, indoor and mixed light cultivation and nursery, volatile and non-volatile manufacturing, distribution, and testing) from a Use Permit (Inland) or Coastal Development Permit (Coastal) to an Administrative Permit (Inland) or Coastal Administrative Permit (Coastal);
- 2) Create a “Minor Exception” to the 1,500 foot setback required between retail facilities if a retailer would be located in a Community Area, Rural Center, or “Large Shopping Center”, and would not result in more than 3 retail facilities within a Community Area or 2 retail facilities within a Rural Center or Large Shopping Center. “Large Shopping Center” is defined in the ordinance and detailed below. The Chief of Planning would be the appropriate authority to consider whether the criteria is met; and
- 3) Create a “Major Exception” for retail facility applications that do not qualify for the Minor Exception. These operators would be required to obtain a Use/Coastal Development Permit if there is an existing retail facility within 1500 feet. The Planning Commission would be the appropriate authority to consider the Use/Coastal Development Permits.

Resource Management Agency (RMA) consulted with Monterey County Public Health Department (MCPHD) on options to address potential public health impacts that may result from increased density of retail facilities in the unincorporated area. While MCPHD was comfortable with much of the language in the draft ordinances

prepared by RMA, MCPHD suggests the following additional modifications:

- 1) Modification to setback “Minor Exception”: Add additional qualifiers for the minor exception such that an exception to the 1,500 foot setback does not apply when:
 - a. The proposed dispensary is located in a census designated area of a County subdivision having 21% or higher of the population being children ages 0 to 17.
 - b. The proposed retail facility would result in disproportionate concentration of cannabis retail facilities in or adjacent to low-income communities.
 - c. Approval of an exception would exceed a cap of:
 - i. Option 1: Seven retail facilities in the unincorporated areas of the County based on a ratio of one retail facility per 15,000 inhabitants in unincorporated areas of the County; or
 - ii. Option 2: Twenty retail facilities County-wide, inclusive of retailers within incorporated city limits, based on a ratio of one retail facility per 22,000 inhabitants in the County.

In rural areas, the Chief of Planning may grant exemptions to this cap if the distance to the nearest retail facility exceeds 20 miles.
- 2) Delete the Major Exception.

These modifications are not in the recommended draft ordinances primarily because they are difficult to define and implement in the planning process, and the Board direction was to make the criteria clearer. In addition, these edits would not address the permitting challenges encountered to date and would significantly limit discretion of the appropriate authorities to consider permits that do not conform to the specified criteria. The draft ordinances do limit the minor exceptions as a means of addressing densities in the unincorporated areas. The decision to include or exclude MCPHD edits from the ordinance is a matter of policy for consideration by the Planning Commission and the Board of Supervisors.

For the purposes of this report and hearing, staff and the Board of Supervisors seek a recommendation from the Planning Commission on the draft zoning ordinance amendments described above in accordance with California Government Code Section 65853. The Planning Commission’s recommendation will be transmitted to the Board of Supervisors for consideration. Board hearings on all of the relevant regulatory updates are anticipated to occur in next month (October 2018). Following Board action on the ordinance updates, the Coastal zoning ordinance (Title 20) will be transmitted to the Coastal Commission for certification.

Additional information on the draft ordinance is provided in the discussion below.

DISCUSSION:

This project involves two zoning ordinances (one coastal and one inland), with both draft ordinances addressing:

- 1) Changing commercial cannabis permit requirements; and
- 2) Setbacks required between cannabis retail facilities.

1) Change in permit requirements.

The Monterey County Code requires approval of a Use Permit (inland) or Coastal Development Permit (coastal) for commercial cannabis activities. RMA and the Cannabis Committee recommend that the permitting process for commercial cannabis activities be simplified to reflect what has become a relatively standard review and approval process. For cultivation, the only controversy has been the potential for offsite odor, which has been addressed with a standard condition of approval on all further projects. For retailers, the

main controversy surrounds the existing 1,500 foot setback requirement, which is being addressed as part of these ordinances. Although streamlined, the Administrative process would still afford public opportunity to request a hearing if an issue arises, while allowing the large number of non-controversial permits to be processed more expeditiously.

Recently released draft permanent state regulations interpreting Section 26050.2 of the Business and Professions Code implement a pending deadline that the state will not issue any new temporary licenses or extend any existing temporary state licenses for after December 31, 2018. CSAC, working with Monterey County, recently successfully brought SB 1459 to change language in Section 26050.2 of the Business and Professions Code. The state will now issue provisional licenses in 2019 so that local jurisdictions have more time to process local permits. However, given the large number of pending permits in Monterey County, the process still needs to be expedited.

The Administrative Permit process is intended to expedite work flow and reduce the time needed to process certain development applications which are of a minor and non-controversial nature, while still providing application review by all relevant County agencies. The Administrative Permit process still provides for public notice of pending decisions during which time any interested member of the public can request a public hearing. The process also still maintains a discretionary review for all proposed cannabis uses. In addition, any requested permit that is controversial or precedent setting could be referred to the Planning Commission by the Director of Planning.

Lastly, the proposed change in permitting requirements would align commercial cannabis uses with permitting of similar non-cannabis uses already established in Titles 20 and 21. In developing the current cannabis regulations, the County added commercial cannabis activities as a conditional use allowed in certain zones that already permitted similar non-cannabis uses. For instance, cannabis cultivation is permitted in Farmland Zoning where a cultivation of crops other than cannabis is a principal use allowed. The proposed amendments would classify commercial cannabis uses similar to other uses in the same zones without changing the locations or criteria for cannabis uses.

2) Cannabis Retailer Setbacks.

The Monterey County Code requires that cannabis retailers (also referred to as “dispensaries”) be located more than 1,500 feet from another dispensary. These setbacks were established to distribute the density of dispensaries and to align with anticipated state regulations. However, the setbacks have created challenges processing applications and current state law does not specifically limit potential densities of dispensaries. To address local permitting challenges, staff has been directed to explore amending the setback requirement between dispensaries.

On February 14, 2018, staff presented draft ordinances to the Planning Commission that would have deleted the 1,500-foot setback and instead required a review of public convenience and necessity. The Planning Commission recommended approval of those ordinances. However, the Board found the public convenience and necessity criteria nebulous, and directed staff to return to the Cannabis Committee. In consultation with the Cannabis Committee, staff has revised the portion of the ordinances modifying the dispensary setback requirements and now returns to the Planning Commission for review and recommendation.

The attached draft ordinances would maintain the 1,500 foot setback and create a minor exception to the 1,500 foot setback if an applicant can demonstrate that “special circumstances” exist and provided that granting the exception would not exceed the limits established in the ordinance. A provision requiring approval of a Use

Permit (Inland) or Coastal Development Permit (coastal) by the Planning Commission for any dispensary application not conforming to the 1,500 foot setback and not qualifying for a minor exception has also been added (major exception).

“Minor Exception”:

The draft ordinances would provide the Chief of Planning with the authority to grant an exception to the 1,500-foot setback when the applicant can satisfactorily demonstrate that “special circumstances” exist. “Special circumstances” would be considered to exist when:

- A retailer would be located within a Community Area, Rural Center, or Large Shopping Center; and
- When granting an exception to the setback would not result in more than 3 dispensaries in a Community Area, or more than 2 dispensaries in a Rural Center of Large Shopping Center.

The exception to the setback could be approved as part of the regular permit review processes for the dispensary application, and would not require granting of a separate entitlement.

Community Areas and Rural Centers are designated by the 2010 General Plan as existing population centers, and areas that are a priority for new development and growth. In the Coastal Zone, Moss Landing is also a designated as Community area within the North County Land Use Plan. These areas typically have commercial retail areas serving a neighborhood of higher density residential uses. Staff finds that these areas are appropriate locations for cannabis retail uses provided sensitive receptors are not impacted (neighborhood parks, schools, etc). Similar logic applies to Large Shopping Centers. The definition of “Large Shopping Center” is intended to capture regional serving shopping areas that have multiple retail and commercial uses, and often provide multiple options for grocery shopping, clothes shopping, and other goods serving larger regional shopping needs. Maps illustrating Community Areas, Rural Centers, and Large Shopping Centers are attached as **Exhibit B** to this report.

In all three of these areas, more than one dispensary may have been permissible under the existing setback requirement (without the proposed exception) if the dispensaries were spaced throughout the given area by more than 1,500 feet. The proposed criteria would allow retailers to be located closer to one another without significantly affecting the maximum permitted density in these areas. This draft ordinance would address two of the three permitting challenges encountered to date including competing applications in the Carmel Rancho Shopping Center (a “Large Shopping Center”) and in the community of Pajaro (a “Community Area”). It would not address competing applications off Reese Circle in Salinas, which has been an issue raised at the Planning Commission.

This location criteria in the proposed draft is clear and easy to implement, and the limits on the number of dispensaries addresses some of the concerns that have been raised with respect to potential public health impacts that may result from increased density of dispensaries in a given area. Monterey County Public Health remains concerned about the potential density or concentration of cannabis dispensaries within certain areas. A further discussion on public health and dispensary densities is included at the end of this section below.

“Major Exception”:

For cannabis dispensary applications that do not meet the 1,500 foot setback from another dispensary and when the Chief of Planning determines that a “Minor Exception” is not appropriate, the draft ordinances would provide/require consideration of a Use/Coastal Development Permit. The Planning Commission is designated as the appropriate authority to consider these permits.

This permit process provides the opportunity for consideration of applications for permits that do not meet the setback requirements or established exceptions without the need for a Variance or ordinance amendment. This

could address all circumstances involving permitting challenges encountered to date and any which may arise in the future. This process could include consideration of densities, population of youth in the area, setbacks from sensitive receptors, and other applicable criteria. However, this Major Exception route creates ambiguity with respect to the theoretical maximum density of cannabis dispensaries in certain neighborhoods and County-wide. For this reason, Public Health is not supportive of the major setback provision.

Public Health and Dispensary Densities:

At the direction of the Cannabis Committee, RMA coordinated with Public Health staff through the development of the draft ordinance as it relates to dispensary setbacks. Public Health recommends that the Major Exception process be removed, and that additional restrictions be included on where and when the Minor Exception applies.

According to correspondence from Public Health:

Amending setbacks or lacking establishment of an excess density, or an excess of sites concentrated in vulnerable communities as has traditionally occurred with tobacco and alcohol outlets. This is a critically important part of getting cannabis legalization right. A recent study found that higher dispensary density in states with legal cannabis laws was associated with higher likelihood of youth ages 14-18 experimenting with cannabis vaping and edibles. Even density of legal cannabis dispensaries as low as 1/100,000 residents were associated with increases.^[1] Similarly, a review of studies of tobacco retailer density and adolescent smoking found that tobacco retailer density and proximity were correlated with adolescent lifetime smoking, past 12-month smoking, past 30-day smoking, and susceptibility to smoking.^[2] Studies have consistently found a relationship between greater alcohol outlet density with increased alcohol consumption and related harms, including medical harms, injury, crime, and violence.^[3] Alcohol outlet density has been found to be highly relevant to the amount of alcohol teens consume and therefore to teens' impaired driving. Policies such as those regulating the age of bartenders, sellers, or servers, and social host civil liability laws, do not appear to have the same impact on teens' alcohol-related crash incidence as other types of policies such as restricting alcohol outlet density. Once licenses are issued, as we know from years of tobacco and alcohol experience, it is extraordinarily difficult to revoke them, as businesses have invested in their creation. Permitting excessive outlet density to occur from the start represents clear negligence in public health protection in light of decades of experience that provide extensive evidence of probable harm.

For these reasons, we believe the proposed regulations should under no circumstances allow an unlimited number of licenses. The longer-term decision on optimal density to reduce or eliminate the illegal market while minimizing harm from a legal market should be taken only after careful study and increased gradually if appropriate. Using the same proportion as Washington did initially, of 1:22,000 inhabitants, would be roughly 1,784 licenses. We recommend no more than 1:22,000 inhabitants in any county. We also recommend that there be a distance of at least 1,000 feet between licensed retailers. Excessive licensing in this first period could lead to irreversible harms in some communities. The proposed conditions for denying licenses for excessive concentration (§5019) have no absolute standard in relation to population, only in relation to other census tracts in the same county or county rules, if these exist. There should be no risk of outlet flooding or "fait accompli" through excessively lax initial regulation.

Several local jurisdictions are already taking the step of limiting the number of retailers in their jurisdiction. For instance, San Diego City permits a maximum of 4 retailers in each of their 9 council

districts for a total of 36 retailers (max) or 1:37,000. Pasadena has likewise limited the number of retailers in its jurisdiction to approximately 1:24,000.

Based on this justification, Public Health recommends the ordinances be further modified from the current proposed draft form to:

- 1) Minor setback modification: Add additional qualifiers for the minor setback exception such that an exception to the 1,500 foot setback does not apply when:
 - a. The proposed dispensary is located in a census designated area of a County subdivision having 21% or higher proportion of the population being children ages 0 to 17.
 - b. The proposed retail facility would result in disproportionate concentration of cannabis retail facilities in or adjacent to low-income communities.
 - c. Approval of an exception would exceed a cap of:
 - i. Option 1: Seven retail facilities in the unincorporated areas of the County based on a ratio of one retail facility per 15,000 inhabitants in unincorporated areas of the County; or
 - ii. Option 2: Twenty retail facilities County-wide, inclusive of retailers within incorporated city limits, based on a ratio of one retail facility per 22,000 inhabitants in the County.

In rural areas, the Chief of Planning may grant exemptions to this cap if the distance to the nearest retail facility exceeds 20 miles.
- 2) Delete the Major Exception.

If recommended for inclusion, these additional changes would exclude all Major Exceptions to the 1,500 foot setback, preclude applying the Minor Exception in much of northern Monterey County and in the areas surrounding the cities in the Salinas Valley, and create an additional limitation on the number of dispensaries that can be permitted County-wide. If these suggestions were included, only one of the three pending dispensary applications would qualify for an exception to the 1,500 foot setback requirement (the pending application in the Carmel Rancho Shopping Center). Pending applications in the community of Pajaro and Prunedale would not qualify because Pajaro contains a high proportion of youth and Prunedale (Reese Circle) is not within a Community Area, Rural Center, or Large Shopping Center. **Exhibit C** to this report contains a map illustrating the areas having a “high population of youth.”

The decision of whether or not to include the suggested additional changes from Public Health is a policy decision for the Planning Commission and ultimately the Board of Supervisors.

California Environmental Quality Act (CEQA):

The state legislature provides a statutory exemption from CEQA for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review. (Business and Professions Code section 26055(h)). This statutory exemption expires July 1, 2019. The County’s draft ordinances require an Administrative/Coastal Administrative Permit for all commercial cannabis activities, and these permits are individually subject to CEQA review. Therefore, these ordinances are statutorily exempt from CEQA review pursuant to Business and Professions Code section 26055 (h).

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

County Counsel's Office

FINANCING:

RMA made these amendments a priority based on Board direction, and utilized existing staff to complete the work. Funding for staff time associated with this ordinance development is included in the FY18-19 adopted Budget for the agencies and departments involved.

Prepared by: Craig W. Spencer, Supervising Planner, x5233

Reviewed by: Brandon Swanson, RMA Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and Development Services

The following attachments are on file with the RMA:

Exhibit A - Draft Resolution recommending adoption of:

Attachment 1 - A Draft Ordinance amending Title 21 (inland zoning)

Attachment 2 - A Draft Ordinance amending Title 20 (coastal zoning)

Exhibit B - Map Illustrating Community Areas, Rural Centers, and Large Shopping Centers

Exhibit C - Map Illustrating areas with a High Percentage of Youth

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); Land Watch; John H. Farrow; Janet Brennan; George Brehmer; All interested parties requesting notice of Cannabis regulations; Planning File REF150048