



Board Report

File #: PC 19-032, Version: 1

REF150048 - OUTDOOR CANNABIS CULTIVATION PILOT PROGRAM

Public hearing to consider making a recommendation to the Board of Supervisors on draft ordinances amending Monterey County Code (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.

(Outdoor Pilot Program - REF150048)

RECOMMENDATION:

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

1. Find the ordinances statutorily exempt from the California Environmental Quality Act;
2. Approve two draft ordinances amending:
 - a. Title 20 of the Monterey County Code (coastal zoning) to create a pilot program establishing land use regulations for limited outdoor commercial cannabis cultivation in the Big Sur Land Use Plan area (**Exhibit B**); and
 - b. Title 21 of the Monterey County Code (non-coastal zoning) 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 (**Exhibit C**).

SUMMARY:

Based on direction from the Board of Supervisors and the Cannabis Committee, Resource Management Agency (RMA) staff prepared draft ordinances amending Titles 20 and 21 of the Monterey County Code (coastal and non-coastal) to establish a pilot program for permitting limited outdoor cannabis cultivation in the Big Sur Land Use Plan area (coastal) (**Exhibit B**), and Carmel Valley Master Plan and Cachagua Area Plan areas (non-coastal) (**Exhibit C**).

The draft ordinances would establish a five year pilot program for permitting and regulation of limited outdoor cannabis cultivation only in the following areas of unincorporated Monterey County: Big Sur Land Use Plan, Carmel Valley Master Plan, and Cachagua Area Plan. 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.

As drafted, the ordinances require an Administrative Permit (Inland - Carmel Valley and Cachagua) or Coastal Administrative Permit (Coastal- Big Sur) to allow commercial outdoor cannabis cultivation up to 10,000 square feet of canopy on "Qualified Properties." Administrative Permits and Coastal Administrative Permits are noticed to neighbors and the public, providing the opportunity for public involvement in permitting of individual properties under this pilot program in each case. Qualified Properties include all of the following:

1. Location in the Big Sur Land Use Plan area, Carmel Valley Master Plan area, or Cachagua Area Plan area.
2. Location in one of the following zoning districts:
 - a. Big Sur Land Use Plan - Rural Density Residential (RDR) or Watershed and Scenic Conservation (WSC) zoning districts;
 - b. Carmel Valley Master Plan area - Rural Density Residential (RDR) zoning district; and

c. Cachagua Area Plan - Rural Density Residential (RDR) and Resource Conservation (RC) zoning districts.

3. The property must be at least 10 acres in size.

4. The property must have been legally cultivating medical cannabis prior to January 1, 2016.

In addition to the property qualifications summarized above, the draft pilot program ordinance establishes regulations to minimize nuisances, protect neighborhood character, and protect the environment. Draft qualifications and regulations have been developed with feedback from industry representatives, Land Use Advisory Committees (LUAC) comments, Agricultural Advisory Committee (AAC), public comments, and with guidance from County staff involved in permitting and enforcement. Based on these criteria, staff estimates that the pilot program would result in a potential for up to 50 outdoor grow sites. Feedback received on the draft ordinances to date is summarized in the discussion below.

The Planning Commission is asked to forward a recommendation to the Board of Supervisors on the draft ordinances. At the direction of the Cannabis Committee and because the statutory exemption from the California Environmental Quality Act (CEQA) for cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review expires in July, staff is attempting to get the ordinances to the Board of Supervisors in June of this year. In the Coastal Zone (Big Sur), the pilot program ordinance will need to be certified by the Coastal Commission before it can take effect, but the Board must take action prior to July 1, 2019 in order for the ordinance to qualify for a CEQA exemption.

DISCUSSION:

Staff met 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), and coordinated with Coastal Commission staff. Each of the consulted groups and Committees has expressed support for the pilot program provided 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 have requested the following changes:

- Amend the 10 acre minimum lot size requirement and allow cultivation on smaller lots sizes (2 acres or more) with a sliding maximum canopy based on lot size;
- Reduce the setback requirement from the nearest offsite habitable structure; and
- Develop a transfer of cultivation credit program 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.

Staff comments: Within all of the applicable zoning designations included in the pilot program, all agricultural uses including crop farming and tree farming are listed as a use allowed on lots of 10 acres or more. The 10 acre minimum lot size places cultivation under the pilot program in areas with larger lot sizes and the Agricultural Advisory Committee has recommended keeping the 10 acre minimum. The 1,000 foot setback is the minimum distance recommended to minimize odor nuisances given the approach within the ordinance to address odors by policy rather than through continual enforcement efforts. The transfer program was explored but is not recommended for this pilot program as it complicates permitting and could have unintended consequences.

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 (staff is in the process of developing goals and measurement criteria)
- 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; and
- 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.

Staff comments: Concerns and recommendations raised at the LUAC meetings have been addressed to the extent feasible. Staff is developing draft criteria by which to measure the pilot program at the five year mark, odors are addressed through setbacks and minimization measures in the ordinance. Regulations are provided to minimize impacts on environmental resources, including requirements for finding consistency with the General Plan (non-coastal) or Land Use Plan (coastal). Staff has made the Cannabis Committee aware of the request for increased Sheriff presence and the request for investment in affected communities.

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; and
- Create a residency requirement to minimize outside influences in the affected areas

Staff comments: The pilot program originated as a program to allow those who were responsibly involved in medicinal cannabis cultivation but were excluded from cultivating by subsequently adopted rules an opportunity to obtain permits. Staff and the Cannabis Committee desire to study outdoor cultivation on a pilot basis before considering expanding the program to other non-cannabis farmers or within agricultural lands in Monterey County. Regulations for cultivation of lands on slopes are included in the regulations by reference and requirement for consistency of all permits with General Plan and Land Use Plan regulations. Staff is considering drafting a separate ordinance amending Chapter 7.90 of the Monterey County Code to require cultivators to live in the community in which they cultivate.

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 full Board of Supervisors. The recommended changes have been incorporated in the draft ordinance including requiring a

setback of 1,000 feet from playgrounds, youth centers, and similar uses consistently throughout the ordinance, prohibiting generators as a power source, and defining “lot” within the ordinance. Staff will continue to work with the Sheriff on the potential for increased law enforcement presence in Cachagua.

This list of comments is not exhaustive. For more information on public comments refer to the detailed discussion in **Exhibit A**, the LUAC and AAC recommendations in **Exhibit D**, and correspondence received on the pilot program in **Exhibit E**.

Next Steps

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 (June 2019). Following Board action, the Coastal zoning ordinance (Title 20) will be transmitted to the Coastal Commission for certification. The Pilot Program will be reviewed before its expiration in five years to determine appropriate long term regulations for outdoor cultivation in Monterey County.

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.

See **Exhibit A** for a more detailed discussion.

OTHER AGENCY INVOLVEMENT:

The following Departments or Agencies have been involved:

- Resource Management Agency
- Environmental Health Bureau
- Agricultural Commissioner
- Treasurer/Tax Collector
- Sheriff’s Office
- District Attorney’s Office
- County Counsel’s Office
- Economic Development
- CAO’s Office

FINANCING:

Funding for staff time associated with development of the pilot program is included in the FY18-19 Adopted Budget for each of the involved Departments/Agencies. Implementation of new regulations is anticipated to impact services, which staff believes will necessitate additional staff. If the pilot program regulations are adopted, large upfront costs that will impact the General Fund are anticipated.

The County Administrative Office (CAO) is developing financial estimates and projections.

Initial resource and staffing cost estimates from each County Department involved in permitting and enforcement total approximately \$1,000,000. The Cannabis Committee has directed staff to make the program

revenue neutral, meaning that if adopted, the pilot program will require setting the tax rate higher than \$1/square foot to increase potential tax revenue, providing for increased canopy areas, and/or work with County Department heads to cut costs from the initial estimates. Reductions in funding to County Departments may result in less effective or efficient permitting and enforcement.

Prepared by: Craig W. Spencer, Interim Planning Manager, ext. 5233

Reviewed by: Brandon Swanson, Interim Chief of Planning

Approved by: Carl Holm, AICP, Director, RMA

The following attachments are on file with the RMA:

- Exhibit A - Detailed Discussion

- Exhibit B - Draft ordinance adding Chapter 20.69 (coastal pilot program)

- Exhibit C - Draft ordinance adding Chapter 21.69 (non-coastal pilot program)

- Exhibit D - Land Use Advisory Committee (LUAC) recommendations

- D-1 - Big Sur

- D-2 - Carmel Valley

- D-3 - Cachagua

- D-4 - Agricultural Advisory Committee

- Exhibit E - Correspondence

- Exhibit F - Land Use Maps