



Board Report

File #: PC 19-038, Version: 1

REF150048 - OUTDOOR CANNABIS CULTIVATION PILOT PROGRAM

Continued from May 8, 2019; 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.

RECOMMENDATION:

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

1. Find the ordinances qualify as statutorily exempt from the California Environmental Quality Act pursuant to California Business and Professions Code section 26055(h), exempting ordinances adopted prior to July 1, 2019 that require discretionary review of individual permits which are individually subject to CEQA review;
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 A, Attachment 1**); 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 A, Attachment 2**).

SUMMARY:

On May 8, 2019, the Planning Commission considered two draft ordinances (inland and coastal) prepared to reflect direction from the Board's Cannabis Committee (standing committee) for establishing regulations for outdoor commercial cannabis cultivation on a limited basis (pilot program). At the hearing, the Planning Commission requested that the purpose of the pilot program be defined, that measurements be developed for review of the pilot program in the future, and directed staff to make specific revisions to the draft ordinances.

Based on direction, staff has added to the purpose section of the ordinances to include providing opportunities for those who historically cultivated cannabis in Monterey County (Section 20/21.69.020) in addition to other purposes already listed. Measurable performance criteria for future reporting on the pilot program are being refined separately from the ordinances based on the stated purpose of the ordinance (see Discussion below for more detail). Staff has also revised the draft ordinances in accordance with direction from the Planning Commission on May 8, 2019 as follows:

1. Remove the 10 acre minimum lot size requirement (no lot size restriction);
2. Include Grazing Lands and Farmlands 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 as needed*;
5. Clarify or remove the '*inspection by air*' language; and
6. Require an onsite resident.

These revisions have been incorporated in draft ordinances per direction of, and for consideration by, the Planning Commission. Staff recommends a minimum, setback of 300 feet from the nearest offsite habitable

structure (item 4 above) to reduce impacts of safety and nuisance. In addition, staff recommends a uniform setback requirement to ensure consistent standards for applicants and the public.

Several other revisions to the ordinances are proposed as a result of additional communication among staff and as a result of changes suggested by the Planning Commission. Those revisions include clarifying adequate water source requirements in coordination with the Environmental Health Bureau and adding a canopy coverage limitation at 2.5% of the total parcel size to avoid commercializing residential properties. Revisions are described in more detail in the discussion below.

The Planning Commission is asked to forward a recommendation to the Board of Supervisors on the draft ordinances. Currently, a statutory exemption from the California Environmental Quality Act (CEQA) can be used for cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review. However, this exemption expires July 1, 2019, and Board direction is for staff to get the ordinances processed to the Board of Supervisors by the end of June 2019. In the Coastal Zone (Big Sur), the pilot program ordinance will need to be certified by the Coastal Commission before it can take effect. Provided the Board takes action prior to July 1, 2019, the ordinance qualifies for a CEQA exemption, and the Coastal Commission action is considered the functional equivalent of CEQA.

DISCUSSION:

On May 8, 2019, the Planning Commission considered two draft ordinances (coastal and non-coastal) establishing regulations for permitting of limited outdoor cannabis cultivation in the Big Sur, Carmel Valley, and Cachagua planning areas. At the hearing, the Planning Commission continued the hearing to May 29, 2019 with direction to staff to revise the draft ordinances before forwarding a recommendation to the Board of Supervisors. Revisions to the draft ordinance are described in more detail below.

As drafted, the ordinances require a discretionary permit, Administrative Permit (Inland - Carmel Valley and Cachagua) or Coastal Administrative Permit (Coastal- Big Sur), for 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.

Purpose and Performance Measures

The Planning Commission requested that the purpose of the pilot program be clearly defined and used to establish meaningful program measurement criteria. The draft regulations defined the purpose of the pilot program as the following:

- A. To establish a pilot program to provide uniform procedures for consideration of permits for outdoor cultivation and outdoor cultivation ancillary uses in the [applicable] planning areas;
- B. To gather data and information related to outdoor cultivation and outdoor cultivation ancillary uses to enable the County to evaluate the establishment of long-term regulations;
- C. To reduce negative impacts to the environment; and
- D. To provide for protection of public health, safety and welfare of residents, visitors, and persons engaged in outdoor cultivation and outdoor cultivation ancillary uses under this pilot program.

At the direction of the Planning Commission, staff has added the following to the purpose:

- “E. To provide those who historically cultivated cannabis prior to January 1, 2016 within the [applicable] planning area(s) an opportunity to participate in the legalized commercial cannabis industry.”

Based on the purposes described above, staff is developing measurable performance criteria for future reporting

on pilot program, separate from the ordinance. Draft measurements being considered are subject to change but generally include tracking and reporting on permits approved, denied or revoked, number of related code enforcement cases, number of nuisance complaints, property value impacts, feedback from the industry, staff, and the public, and staff is exploring options for wildlife and water quality monitoring but these would add to the costs of the program.

Ordinance Revisions

At the direction of the Planning Commission, the draft ordinances have been revised as follows:

1. Remove the 10 acre minimum lot size requirement. The 10 acre minimum parcel size has been removed from the draft ordinance so there is no lot size restriction.
2. Include Grazing Lands and Farmlands 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 as needed. The setback required between a cannabis site and the nearest offsite dwelling has been reduced from 1,000 feet to 50 feet or more as warranted under the circumstances of the case.
5. Clarify or remove the ‘inspection by air’ language. Language regarding inspections have been removed entirely. Inspections of permitted sites will be governed by zoning code enforcement provisions already within the zoning ordinance and within Chapter 1.22 of the County Code.
6. Require an onsite resident. A requirement to have a dwelling with a principal residence onsite has been added to the draft ordinances tying permitting of cannabis sites to sites where someone lives.

With these revisions incorporated, properties qualified for a permit include:

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 and/or Cachagua Area Plan - Rural Density Residential (RDR), Farmlands (F), Rural Grazing (RG), Permanent Grazing (PG), and Resource Conservation (RC) zoning district (REVISED TO INCLUDE F, RG, AND PG ZONINGS)
3. The property must have been legally cultivating cannabis prior to January 1, 2016; and
4. The property must contain a dwelling that is a “Principal resident.”

Based on the criteria revised by the Planning Commission, staff estimates that the pilot program would result in a potential for up to 100 outdoor grow sites, up from approximately 50 anticipated under the previous draft.

Staff Recommendations

The 10 acre minimum requirement was intended to reduce footprint in order to retain residential character of the properties. To meet this intent without a lot size restriction, staff recommends limiting canopy to no more than 2.5% of the total lot area (20/21.69.060.J). Furthermore, staff recommends at least a 300-foot minimum set back in the ordinance in order to minimize the potential for nuisances by providing separation between cannabis sites and other sensitive receptors, and secure the crops in order comply with Federal law restricting access. To be considered a nuisance odor must be offensive to the senses and interfere with the comfortable enjoyment of property in the area. Cannabis odors and cannabis cultivation activities have the potential to create a nuisance. The greater the distance, the more odors (and noise) will dilute in the atmosphere.

In addition, staff has clarified application requirements to align with exiting health policies for adequate water source to include permission from a water system if applicable (20/21.69.090.D.5) and to require a cross-connection control survey to ensure that irrigation water is not mixed with potable water supplies

(20/21.69.090.E).

Next Steps

The Planning Commission's recommendation will be transmitted to the Board of Supervisors for consideration. Draft ordinances from the Board's Cannabis Committee and Planning Commission will be presented. 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.

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. Staff believes that, due to current challenges with illegal grows and managing the current cannabis program, allowing outdoor grows will necessitate additional enforcement/program staff. Taxes are based on canopy, and initial resource and staffing cost estimates from each County Department involved in permitting and enforcement total approximately \$1,000,000 if the pilot program regulations are adopted. Without adequately taxing this use, costs will exceed revenue thereby impacting the General Fund.

The Cannabis Committee has directed staff to make the program revenue neutral, meaning that if adopted, the pilot program will require setting a tax sufficient to cover the costs of the program based on projected canopy under the pilot program. The County Administrative Office (CAO) is developing financial estimates and projections addressing this issue. 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 - Draft Resolution, including;

- Draft ordinance adding Chapter 20.69 (coastal)
- Draft ordinance adding Chapter 21.69 (non-coastal)

Exhibit B - Advisory Committee recommendations

Exhibit C - Correspondence

Exhibit D - Land Use Maps