

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director




LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS
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MEMORANDUM

Date: June 30, 2017

To: Land Use and Development Review Staff
Cannabis Applicants

From: Carl P. Holm, AICP, RMA-Director 

Subject: Status of Commercial Medical Cannabis Operations and Permitting in Monterey County

cc: Board of Supervisors
Planning Commission
Department Heads

RMA issued a memorandum on February 27, 2017 to address comments and questions from the public about the current status of medical cannabis activities and permitting in Monterey County (Attached). This memorandum is meant to provide an update regarding current medical cannabis regulations and how the County will implement these regulations.

“Good Standing”

Draft State regulations refer to the term “good standing” with the local agency as a requirement for being eligible to obtain a State license. Monterey County requested language that the State defer to the local agency to make that determination, not simply relying on local permits. The following criteria is what Monterey County will be using to determine if an operation is in “good standing”:

- **Location.** Good standing applies only to operations located where the use is permissible under current regulations. This is limited to properties with existing greenhouses/warehouses and the appropriate zoning. Outdoor grows are not allowed in any zoning district. Operations in the coastal zone can submit an application under the current zoning.
- **Permit/Application.** To be considered in “good standing” owners/operators must show due diligence in obtaining all necessary permits (Use Permit, Business Permit, Business License, Building Permits, etc.). Having an application in for the Development Review Committee (DRC) is the beginning of the process to obtain a Use Permit. Due diligence means showing progress toward completing the permitting process, not just filing an application. See *Applications* section below. Exemptions granted to operations under the moratorium (Interim Ordinance Nos. 5254, 5256, 5265) expired February 26, 2017. As such, an exemption does not constitute “good standing” without processing an application.
- **Taxes.** Operators must be current with taxes to be considered in “good standing.” County regulations do not allow issuing a permit unless all taxes have been paid. If an operator has outstanding taxes that have not been paid, the operator will lose their place in the permitting

regulations do not allow issuing a permit unless all taxes have been paid. If an operator has outstanding taxes that have not been paid, the operator will lose their place in the permitting processing order.

- Code/Condition Compliance. An owner/operator will not be considered in “good standing” if an enforcement action (Notice of Violation, Administrative Citation, etc.) is pending. Once a permit is issued, the operation must remain in compliance with all County regulations and any conditions applied to the permit. Failure to comply will result in enforcement. The amortization period allowed pursuant to Monterey County Code Section 21.67.030.G allowing operations to either obtain permits or terminate operations ends on August 12, 2017. The County has, and will, allow applicants to continue operations provided they are in a permissible location and they show due diligence in obtaining all required permits. If an application sits idle for more than two months due to lack of applicant response, or the operation does not meet the regulatory conditions (zoning, existing facility, indoor, etc.) the owner and operator will be subject to enforcement. Building without all necessary building permits will also be enforced. Operations must remain in “good standing” to continue operating past August 12, 2017.

Regulations

The inland regulations became effective on August 12, 2016, and became operative on December 7, 2016 when the commercial cannabis business tax was certified by the County. Applications for the inland areas must comply with these regulations (see Monterey County Code Chapters 7.02, 7.90, 7.100, and 21.67).

The County continues to work with the Coastal Commission to establish medical cannabis zoning regulations in the coastal zone. Meanwhile, applications are being accepted and processed based on current zoning regulations for the coastal zone (see Monterey County Code Chapters 7.02, 7.90, 7.100, and the applicable chapters within Title 20).

Applications:

The County started accepting applications as of December 7, 2016. RMA issued its February 27, 2017 memorandum because numerous known operators had still not submitted permit applications. The County established a deadline of March 31, 2017 to submit DRC applications to be considered for time extension past the August 12, 2017 deadline. Over half of the total cannabis DRC applications were submitted within a couple of days prior to the March 31st deadline.

As of the date of this memorandum, the County has received 86 DRC applications for medical cannabis activities in both the inland and coastal zones. Since March 2017, about 40 applications have completed the initial Development Review Committee stage. Of those, only four have submitted formal Use Permit applications, and one completed the hearing and received approval. For operators in both the inland and coastal zones, we strongly encourage you to submit DRC applications immediately.

We are finding many applications have a long lag time between the necessary steps (e.g., DRC and filing a formal Use Permit application). It is the applicant’s responsibility to show due diligence by completing the application process within a reasonable timeframe. Failure to submit a complete Use Permit application within two months following the post-DRC memo does not show due diligence and the operation could be subject to enforcement.

Process:

To clarify the process:

1. The first step in obtaining medical cannabis permits is to submit a land use application through RMA's Development Review Committee(DRC). DRC applications are processed in the order they are received. If taxes are not paid when an application is ready for DRC, it will be removed from DRC processing and placed at the back of the queue.
2. A Use Permit application is required following DRC, taking into account direction provided at DRC. The County expects applications to be filed within two months following the date of the post-DRC memo.
3. Use Permit applications are processed in the order they are deemed complete. An application cannot be deemed complete until/unless all taxes are paid and there is no unpermitted construction or other code violations on the site. Some applications may move more quickly depending on the level of CEQA review required. Projects deemed categorically exempt under CEQA will generally be heard within 60 days of being deemed complete. If an Initial Study is required, the process can take 3-4 months from the date the application is deemed complete.
4. A Cannabis Business Permit is required for each commercial operation. This Business Permit cannot be issued until a Use Permit is approved. Similar to what was noted above, operators must demonstrate due diligence to remain in "good standing" while pursuing a Business Permit.
5. A Business License is required for each commercial operation. Both a Use Permit and a Business Permit are required to receive a Business License.

NOTES:

- Eligible applicants must continue to diligently pursue all required permits to remain in "good standing." Being in the queue pending County processing for a permit is considered "good standing" provided all taxes are paid and no code violations are present on the property.
- All persons and entities wishing to conduct commercial medical cannabis activities in Monterey County, must be in "good standing" (defined above).
- All persons and entities who are conducting commercial medical cannabis activities in Monterey County and are in "good standing," are not prohibited from operating while they diligently pursue all required permits. However, they do so without guarantee that permits will be granted and without financially backed expectations.

Continuing Efforts

Regulation and permitting of medical cannabis activities is a new endeavor and the County continues to improve our permitting process. As such, new interpretations and updates may be necessary. We are committed to keeping everyone informed as we move forward.

Regulations for outdoor cultivation may ultimately be considered. However, medical commercial cultivation is currently limited to existing indoor facilities only (greenhouse, warehouse, etc.). Outdoor growing and building new indoor facilities is not allowed.

Detailed information about the County's regulations, permitting requirements and process, frequently asked questions, application forms, and application fees have been added to the RMA-Planning website at: <http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/faq-s/cannabis-permitting-information>

Those seeking general information concerning permanent medical cannabis coastal regulations are encouraged to contact RMA-Planning at (831) 755-5025.

Those seeking information with regard to taxes are encouraged to contact the Treasure/Tax-Collector's Office at (831) 755-5017.

Attachment:
February 2017 memo

Attachment 1

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MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



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MEMORANDUM

Date: February 27, 2017

To: Land Use and Development Review Staff

From: Carl P. Holm, AICP, RMA-Director

Subject: Status of Commercial Medical Cannabis Operations and Permitting in Monterey County

cc: Board of Supervisors
Planning Commission
Department Heads

Many comments and questions have been received from the public about the current status of medical cannabis activities and permitting in Monterey County. General references and observations have been made regarding the existence of more activity occurring than has been granted via exemptions from the interim ordinance. To address these questions and to aid in establishing fair and balanced business practices; this memorandum provides information regarding current medical cannabis regulations and how the County will implement these regulations during this transitional period.

Interim Ordinance - Exemptions:

On July 7, 2015, the Board of Supervisors adopted an Interim Urgency Ordinance that temporarily prohibited new collective and cooperative cannabis activities in Monterey County while the County developed permanent regulations for such operations (Ordinance No. 5254). The Interim Ordinance was extended and amended (Ordinance Nos. 5256 and 5265), to remain in effect through February 26, 2017 or until permanent regulations were adopted, whichever occurred first. In addition, certain exemptions were established that allowed collectives and cooperatives to continue operating during the effective period of the Interim Ordinance, if they submitted evidence to demonstrate to the satisfaction of the Director of Planning that the medical cannabis operation met the established exemption criteria.

Out of fourteen applications, six operations were provided a letter from the Director of Planning indicating that they were not prohibited from continuing their operations pursuant to the Interim Ordinance. The others were denied or a decision was not rendered due to changes in the regulations discussed below. The six operations were required to submit an application for a permit within 30 days of any new regulations becoming effective.

Permanent Regulations - Operative Date:

On July 9 and 12, 2016, the Board of Supervisors adopted ordinances establishing regulations for all commercial medical cannabis activities in the inland areas of Monterey County, and a resolution of intent to adopt ordinances establishing regulations in the coastal areas of Monterey County. The inland regulations became effective (but not operative) on August 12, 2016.

The operative date of the ordinances was contingent upon passage of a cannabis business tax ballot measure, Measure Y, which was approved by the voters in November 2016. With the passage of Measure Y, the inland regulations became operative on December 7, 2016 and as of that date, the Interim Ordinance was no longer effective in the Inland Zone.

Detailed information about the new regulations, permitting requirements and process, frequently asked questions, application forms, and application fees have been added to the RMA-Planning website at:

<http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/faq-s/cannabis-permitting-information>

Staff with the County and Coastal Commission met/talked on multiple occasions but we have not been able to reach consensus on language for an ordinance allowing medical cannabis operations within the Coastal Zone in Monterey County. To maintain maximum flexibility to seek resolution of potential policy conflicts between the County's current Local Coastal Program (LCP) and Commission staff's recommended modifications, the County has decided to withdraw the LCP Amendment application from Coastal Commission consideration at this time. We want to continue discussions and negotiation of issues relative to medical cannabis in Monterey County, so that we can develop mutually agreeable policies and regulations for this use in the Coastal Zone. The Interim Ordinance expires on February 26, 2017, even if the permanent coastal regulations are not operative at that time.

Those seeking general information concerning permanent coastal regulations are encouraged to contact RMA-Planning at (831) 755-5025. Those seeking information with regard to taxes are encouraged to contact the Treasure/Tax-Collector's Office at (831) 755-5017.

Legally Established Greenhouse or Warehouse:

Commercial medical cannabis cultivation is required to be located within a greenhouse, warehouse or industrial building that was legally established prior to January 1, 2016, and located only in the Farmland or Industrial zoning districts. Determining whether a facility was legally established prior to January 1, 2016 is dependent on fact-specific permit and construction records in each case. Applicants should research permits for the property where they are located. If permits are not found, but there is clear evidence that structures existed prior to the cut off date, applicants should meet with RMA to review the evidence.

Applicants may decide to demolish existing greenhouses or warehouse buildings in advance of obtaining a use permit and a business permit for medical cannabis cultivation. In this case, RMA-Planning should be contacted to prepare a letter that establishes how much floor area legally existed prior to January 1, 2016. This research will require the applicant to pay any applicable research fees. If structures are demolished with recognition from the RMA regarding the previously established floor area, then they can be replaced elsewhere on the site, provided they do not exceed the recognized floor area and do not impact productive farmland. Replacement is not limited to the previous footprint or configuration, it is only limited to the previously recognized square footage. The intent is to get the best design where the floor area does not exceed pre-existing conditions.

Applications:

The inland regulations became effective on August 12, 2016, and became operative on December 7, 2016 when the commercial cannabis business tax was certified by the County. As of December 7, 2016, the County has been accepting applications for medical cannabis-related permits in the Inland Zones. All commercial medical cannabis operations in Monterey County are required to obtain use permits, cannabis business permits, and business licenses.

As of the date of this memorandum, there are 17 Land Use Permit applications for medical cannabis activities being processed. None have been approved or granted as of the date of this memorandum. Applications for medical cannabis activities in the Coastal Zones are not currently being accepted as the coastal regulations are still in process with the Coastal Commission.

As of August 12, 2016, Section 21.67.030.G of the Monterey County Code states: “*Commercial medical cannabis activities that were legally established prior to the effective date of Ordinance No. [5270] enacting this Chapter shall have one (1) year from the effective date of the Ordinance to obtain all required County permits, licenses, and entitlements, or to terminate their operations.*” This means legal collectives or cooperatives legally established before August 12, 2016, must have County permits by August 12, 2017, or terminate operations.

During this transition period, collectives and cooperatives are not prohibited from operating provided those operations do not violate any other County regulation or state law. This interpretation should also not be considered permission from the County to operate a medical cannabis business without a permit. Rather it is a recognition that we are in transition period from previous regulations.

In the Coastal Zone, following expiration of the Interim Ordinance, and until the Coastal Zone Ordinance is adopted by the Board of Supervisors, the County will require a Coastal Development Permit for commercial cannabis activities. The procedures and requirements regarding registration of existing commercial cannabis activities still apply. An application for Development Review Committee to obtain a use permit will be required within three months of the effective date of the Coastal regulations.

Process:

To clarify the process for businesses currently operating prior to obtaining permits:

- 1. All persons and entities conducting commercial medical cannabis activities in Monterey County, who are eligible to obtain permits, must obtain those permits by the August 12, 2017 cutoff, or terminate operations.**
- 2. The first step in obtaining medical cannabis permits is to process a land use application through the RMA Development Review Committee.**
- 3. The RMA is requesting anyone interested in obtaining medical cannabis permits to submit a Development Review Committee request form by March 31, 2017. This includes information about the type, nature, location, and size of the cannabis operation.**
- 4. Eligible applicants who submit a Development Review Committee request form by March 31, 2017 and continue to diligently pursue permits in order to meet the August 12, 2017 cutoff date may be considered for an extension of their current use if County processing times take longer than expected.**
- 5. Eligible applicants who have not submitted a Development Review Committee request form by March 31, 2017 will not be eligible for an extension and will be required to terminate their operations on August 12, 2017 if they have not obtained the required County permits by that time.**
- 6. All persons and entities who are currently conducting commercial medical cannabis activities in Monterey County, and have made an application for the Development Review Committee, (not violating any other County regulation or state law), are not prohibited from operating during this interim period between now and August 12, 2017. However, they do so without guarantee that permits will be granted and without financially backed expectations.**

Continuing Efforts

Regulation and permitting of cannabis activities is a new endeavor for everyone in the County. We continue to try to improve our permitting process, so new interpretations and updates may be necessary. We are committed to keeping everyone informed as we move forward. Medical cannabis regulation amendments for outdoor cultivation are being discussed and regulations for recreational (adult-use) cannabis activities are on the horizon. Meanwhile, outdoor cultivation over 100 square feet is not permitted and recreational uses are not allowed.

Carl P. Holm, ACIP
RMA Director