

ORDINANCE NO. 5373

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 7.90 OF THE MONTEREY COUNTY CODE RELATING TO COMMERCIAL CANNABIS PERMIT APPLICATION AND OPERATIONAL REQUIREMENTS

County Counsel Summary

This ordinance amends Chapter 7.90 of the Monterey County Code to clarify commercial cannabis permit application and operational requirements, clarify fee and refund provisions, and give the Appropriate Authority the ability to promulgate administrative rules in the administration and enforcement of this Chapter. The ordinance clarifies application requirements concerning contact information, verification of employees' age, and withdrawal of an application. The ordinance also requires the payment of fees within 24 hours after submission of an application, renewal, modification request, or appeal. The ordinance also allows employees of cannabis operations to consume tobacco or nicotine products in designated areas, requires the display of state licenses, requires 24 hour contact information, and requires the submittal of a cessation of business form upon cessation of a business.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Section 7.90.050 of the Monterey County Code is amended to read as follows:

A. Each application for the establishment of a commercial cannabis permit shall be filed on the form and in the manner prescribed by the Appropriate Authority. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

B. If an applicant holds a valid State provisional license pursuant to California Business & Professions Code Section 26050.2, the applicant must submit an application for a commercial cannabis permit within thirty (30) days of the final approval of the applicable land use entitlement pursuant to Titles 20 and 21 of the Monterey County Code.

C. In all cases, the application shall contain, without limitation, the following documentation:

1. All applicants' names, primary telephone numbers, mailing addresses, e-mail addresses, and a twenty-four (24) hour or nighttime contact telephone number.

2. The physical address(es) and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed commercial cannabis operation will be located,

and the global positioning system (GPS) coordinates of any area that is proposed to contain commercial cannabis activities.

3. Proof of ownership of premises, or if the premises on which the commercial cannabis operation is to occur is rented or leased, written permission from the property owner containing the property owner's notarized signature that authorizes the tenant or lessee to engage in commercial cannabis activities at the site.

4. A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, a description of where each commercial cannabis activity will occur, all entry ways and exits to the site, loading zones and all areas in which cannabis and cannabis products will be stored, grown, or dispensed. The diagram must include a description of the proposed total canopy area of any cultivation and/or nursery operation, including the maximum square footage to be cultivated for the annual term of the permit.

5. If the applicant is a business entity, information regarding the entity, including, without limitation, the legal business name, registered name(s) under which the business will operate, address of record for the entity, contact telephone number(s), its legal status, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

6. The full name, date of birth, social security number, present address and telephone number for all owners, managers, employees, and persons having a twenty percent (20%) or more financial interest in the commercial cannabis activity that is the subject of the application.

7. All owners, managers, and persons having a twenty percent (20%) or more financial interest must submit fingerprints and other necessary information for a criminal background check conducted by any entity authorized by the California Department of Justice to perform Live Scan fingerprinting services.

8. A statement of whether the applicant is applying for a commercial cannabis permit with a M-designation, an A-designation, or both.

9. The employer shall verify that all owners, managers, and employees possess valid government-issued identification and are twenty-one (21) years of age or older. Acceptable forms of identification are an unexpired document issued by a federal, state, county, or municipal government that contains the name, date of birth, physical description, and picture of the individual.

10. The names and addresses of any other commercial cannabis operations currently being operated by the applicant, or that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefore.

11. A full description of the proposed activities and products of the commercial cannabis operation, including proposed hours of operation and the number of employees.

12. A description of the type of State license(s) that will be required for the proposed operations pursuant to California Business and Professions Code Section 26000, et seq. If a State provisional license(s) is held pursuant to California Business and Professions Code Section 26050.2, a photocopy of all applicable State provisional licenses.

13. A detail of the procedures to be utilized at the premises including a description of how chemicals, pesticides and fertilizers will be stored, handled, used, and disposed of; and if applicable, manufacturing methods, odor control methods and devices, how odor control devices will be maintained, the transportation process, inventory procedures, and quality control procedures.

14. A waste disposal plan.

15. If applicable, provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

16. If applicable, the federal tax identification number. If the applicant is a sole proprietorship, the applicant shall submit the social security number or individual taxpayer identification number of the sole proprietor.

17. A statement by the applicant that it is able to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.

18. Authorization for the County, its agents and employees to seek verification of the information contained in the application.

19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.

20. Any other information required by the Appropriate Authority.

D. If an applicant wishes to withdraw an application, a written request to withdraw shall be submitted to the Appropriate Authority.

1. Application fees for a withdrawn application will not be refunded.

2. An applicant may reapply at any time following the withdrawal of an application, but will be required to submit a new application and pay the required application fee.

3. If applicable, an applicant shall file a cessation of business form with the Appropriate Authority within five (5) business days of cessation of existing business operations.

SECTION 2. Subsection A of Section 7.90.060 of the Monterey County Code is amended to read as follows:

A. The Appropriate Authority shall review the application for a commercial cannabis permit and associated documents and shall require, if he or she deems necessary, additional information to complete the application. The Appropriate Authority may deem the application incomplete if it does not contain all required information and documents. Applicants must submit all required information and documents to the Appropriate Authority within thirty (30) days receipt of an incomplete notice.

SECTION 3. Subsection H of Section 7.90.070 of the Monterey County Code is amended to read as follows:

H. An application for modification or renewal shall not be deemed complete until all application fees have been paid.

SECTION 4. Section 7.90.080 of the Monterey County Code is amended to read as follows:

The filing of an application for a commercial cannabis permit, for renewal of a commercial cannabis permit, for modification of a commercial cannabis permit, and appeals shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Applicants and permittees must pay all relevant fees in full within twenty-four (24) hours of submitting their application, renewal, modification request, or appeal. Applicants and permittees are responsible for the costs of inspections, investigations, and any other fee-associated activity established pursuant to this Chapter. Fees, fines, and costs specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time.

SECTION 5. Subsection A of Section 7.90.100 of the Monterey County Code is amended to read as follows:

A. Throughout the term of the commercial cannabis permit, each permittee shall not violate this Chapter and shall comply with all of the following:

1. The canopy area of cannabis located at any premises shall not exceed the maximum canopy limits set by state law and the limits set forth in the commercial cannabis permit. The maximum canopy square footage specified in the commercial cannabis permit is the basis of the County's commercial cannabis business tax pursuant to Chapter 7.100 of the Monterey County Code.

2. A permittee shall not change or alter the premises in a manner which

materially or substantially alters the premises, the usage of the premises, or the mode or character of the business operation conducted from the premises, from the site plan contained in the diagram on file with the application, unless and until written approval by the Appropriate Authority has been obtained. For purposes of this section, material or substantial physical changes of the premises, or in the usage of the premises, shall include, but not be limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation.

3. No cannabis shall be smoked, ingested, or otherwise consumed on the premises.

4. No person under the age of twenty-one (21) shall be employed or otherwise engaged in the operation of a commercial cannabis activity.

5. No person under the age of twenty-one (21) shall be allowed on the premises, unless the permittee is a retail facility and sells medicinal cannabis, in which case persons who are at least eighteen (18) years of age and hold a valid physician's recommendation for medicinal cannabis shall be allowed on the premises.

6. There shall not be a physician located in or around any commercial cannabis operation at any time for the purpose of evaluating patients for the issuance of a medical marijuana recommendation or card.

7. Each permittee shall conspicuously display its state and County permits and licenses required to operate at entrance of the premises. Each commercial cannabis operation that engages in delivery or transportation shall carry a copy of the permits and licenses in all vehicles that deliver or transport cannabis or cannabis products.

8. Odor prevention devices and techniques, such as a ventilation system with a carbon filter, shall be incorporated to ensure that odors from cannabis offsite are minimized to every extent feasible. Odor prevention devices shall be maintained in good working order during the life of the operation.

9. No permittee may hold a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, nor may the commercial cannabis operation include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed, or consumed on the premises.

10. A permittee shall not sell any tobacco or nicotine products on or at any premises permitted under this Chapter. No tobacco or nicotine products may be stored, dispensed, or consumed in the area licensed and permitted for commercial cannabis activities. Tobacco or nicotine products may be stored on the premises in areas not licensed and permitted for commercial cannabis activities, and consumed in a specifically designated smoking area(s).

11. No cannabis or cannabis products, or graphics depicting cannabis or cannabis products shall be visible from the exterior of the premises.

12. All cannabis and cannabis products shall be stored in a secured and locked safe room, safe or vault, and in a manner to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

13. Each permittee shall keep accurate records of its commercial cannabis activities pursuant to the requirements of Sections 26160 and 26162 of the California Business and Professions Code, as they may be amended.

14. Each permittee shall be responsible and liable for safety and security in and around the commercial cannabis operation, and shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft and other crimes. Each permittee shall install and maintain in proper working order, a video surveillance system capable of capturing and maintaining surveillance recordings of all points of entry and exit on the premises. Each permittee shall maintain such surveillance recordings for a period of at least ninety (90) days and shall make such surveillance recordings available to the County upon demand.

15. Each permittee shall notify the County immediately after discovering any of the following: diversion, theft, loss, or any criminal activity involving the commercial cannabis operation; significant discrepancies identified during inventory; or any other breach of security.

16. Each permittee shall provide the Appropriate Authority with a twenty-four (24) hour or nighttime contact telephone number for County use, and provide a name, telephone number, and e-mail address of a community relations contact to whom the public can provide notice of problems associated with the commercial cannabis operation. The permittee shall make a good faith effort to resolve problems without the need for intervention by the County.

17. Any new owners, managers, employees, or persons having a twenty percent (20%) or more financial interest must submit their information to the Appropriate Authority pursuant to Section 7.90.050 and 7.90.070 of this Chapter.

18. All owners, managers, employees, or other persons otherwise engaged in the operation of the commercial cannabis operation shall display a laminated or plastic-coated identification badge issued by the permittee at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the permittee's "doing business as" name and state license number(s), the individual's full name, an employee number exclusively assigned to that individual for identification purposes, and a color photograph of the individual that clearly shows the full front of the individual's face and that is at least one inch in width and one and one-half inches in height.

19. No owners, managers, employees, or persons having a twenty percent (20%) or more financial interest in the commercial cannabis operation may have been convicted of a felony or a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

20. A permittee shall keep a roster on the premises that contains the names and dates of birth of all employees, and a verification statement that there are no employees with felony convictions or drug related misdemeanor convictions reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years.

21. A permittee shall not be delinquent in the payment of all applicable state taxes and fees, County taxes and fees, and other local agencies' taxes and fees.

22. The property owner(s) who own(s) the premises where the commercial cannabis operation is located must, at all times, have all necessary and operative land use entitlements as required by Titles 20 and 21 of the Monterey County Code.

23. When applicable, the permittee must legally hold all required State Licenses under the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code § 26000, et seq.), as it may be amended, and under all other applicable state laws.

24. A permittee shall comply with all applicable federal, state, and local laws, including without limitation, County building, zoning, and health codes.

25. A permittee shall transmit all required information to the California Cannabis Authority as prescribed by the County Treasurer-Tax Collector. The data shall be transmitted by using a secure-access Application Program Interface from a California Cannabis Authority approved licensee-facing software integrator, or through manual submission to the California Cannabis Authority.

26. A permittee shall file a cessation of business form with the Appropriate Authority within five (5) business days of cessation of existing business operations.

SECTION 6. Section 7.90.160 of the Monterey County Code is amended to read as follows:

7.90.160 – Enforcement, penalties, and administration of this Chapter.

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of a misdemeanor. No proof of knowledge, intent, or other mental state is required to establish a violation.

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapters 1.20 and 1.22 of the Monterey County Code, and any other action authorized by law.

D. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Monterey County Code or otherwise authorized by law. Additionally, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, restitution, and any other relief or remedy available at law or in equity. The County, including the Office of the District Attorney and the Office of the County Counsel, may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial cannabis operator or persons related thereto, or associated with, the commercial cannabis activity.

E. For purposes of administration and enforcement of this Chapter generally, the Appropriate Authority may from time to time promulgate such administrative rules and procedures consistent with the purpose and intent of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this 15th day of March 2022, by the following vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams

NOES: None

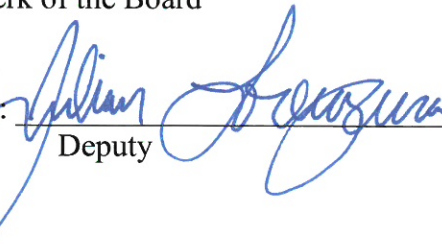
ABSENT: None




Mary Adams, Chair,
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By:  _____
Deputy

APPROVED AS TO FORM:

KELLY L. DONLON
Assistant County Counsel