

ORDINANCE NO. 5273

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 7.95 TO THE MONTEREY COUNTY CODE RELATING TO PERSONAL MEDICAL CANNABIS CULTIVATION

County Counsel Summary

This ordinance adds Chapters 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for cultivation of one hundred square feet total canopy area or less of medical marijuana when such cultivation is by a qualified patient for personal medical use or by a primary caregiver exclusively for the personal medical use of no more than five qualified patients. The permit would cover only the qualified patient or primary caregiver identified on the permit with respect to the premises identified on the permit and would not run with the land. The permit would require the permittee to comply with specific operating requirements relating to matters such as visibility, setbacks, storage of pesticides and fertilizers, use of hazardous substances, and control of odor and light. The ordinance also contains provisions for enforcement.

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

SECTION 1. Chapter 7.95 is added to the Monterey County Code to read as follows:

Chapter 7.95 PERSONAL MEDICAL CANNABIS PERMIT

Sections:

- 7.95.010 Findings and purpose.**
- 7.95.020 Applicability.**
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- 7.95.090 Personal medical cannabis permit nontransferable.**
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- 7.95.110 Suspension or revocation of personal medical cannabis permit.**
- 7.95.120 Procedure for suspension or revocation.**
- 7.95.130 Service requirements.**
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- 7.95.150 Operative date.**
- 7.95.160 Severability.**

7.95.010 Findings and purpose.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. The federal Controlled Substances Act (21 U.S.C. §§ 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

C. The federal government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement strong and effective regulatory and enforcement systems that will address the threat those state or local laws could pose to public safety, public health, and other law enforcement interests.

D. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing cannabis.

E. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, “CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.

F. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

G. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), held that neither the CUA nor the MMP expressly or impliedly preempt the authority of California counties or cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude medical cannabis cultivation.

H. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*; the “MMRSA”). The MMRSA creates a state licensing program for commercial medical cannabis activities. The MMRSA allows counties and cities to maintain local regulatory authority over medical cannabis. Recognizing that limited cultivation by a qualified patient and primary caregiver is exempt from state licensing requirements under the MMRSA, the County desires to establish minimal

reasonable standards for personal medical cannabis cultivation in order to protect the public health, safety and welfare and prevent nuisance.

I. It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety and allow for cultivation of medical cannabis for personal use within reasonable limits, while protecting the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County and comply with state law and federal guidelines.

J. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to medical cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.

K. To address the added financial burden to the County that may result from this ordinance, including costs associated with processing applications under this ordinance as well as additional law enforcement and other costs, this ordinance requires voter passage of a County tax on commercial medical cannabis activities prior to this ordinance becoming operative.

L. This ordinance is intended to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

7.95.020 Applicability.

This Chapter applies in the unincorporated area of the County of Monterey.

7.95.030 Definitions.

The following words and phrases shall have the following meanings when used in this Chapter:

A. “Applicant” means a person eighteen (18) years of age or older who has submitted an application for a permit or renewal of a permit issued pursuant to this Chapter.

B. “Application” means that form provided by the Appropriate Authority in accordance with this Chapter for the purpose of seeking a personal medical cannabis permit.

C. “Appropriate Authority” means the Director of Planning or his or her designee.

D. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code

as enacted by Chapter 1407 of the Statutes of 1972.

E. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

F. “County” means the County of Monterey.

G. “Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the California Government Code;

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or

3. An independent contractor assigned by an organization or entity which provides hearing officers.

H. “Identification card” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

I. “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

J. “Permittee” means a person issued a County permit under this Chapter.

K. “Personal medical cannabis cultivation” means cultivation by a qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. “Personal medical cannabis cultivation” also includes cultivation by a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

L. “Personal medical cannabis permit” means a permit issued by the County to a

qualified patient or primary caregiver for personal medical cannabis cultivation under this Chapter.

M. “Premises” means the building in which personal medical cannabis cultivation takes place, in addition, any accessory structures and appurtenant areas.

N. “Primary caregiver” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

O. “Property owner” means the individual or entity who is the record owner of the subject property where personal medical cannabis cultivation is located or is proposed to be located.

P. “Qualified patient” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

Q. “State” means the state of California.

7.95.040 Personal medical cannabis permit required.

A. Any qualified patient or primary caregiver who intends to engage in personal medical cannabis cultivation shall obtain a personal medical cannabis permit for the fixed location in which personal medical cannabis cultivation is to occur.

B. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in personal medical cannabis cultivation in the unincorporated portion of Monterey County, unless the County has issued such person a permit under this Chapter and the permit is in effect.

C. If a qualified patient or primary caregiver proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis, he or she must obtain all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code and a commercial cannabis permit pursuant to Chapter 7.90 of the Monterey County Code.

D. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

7.95.050 Personal medical cannabis permit application process.

A. Each application for the establishment of a personal medical cannabis permit shall be filed with the Resource Management Agency/Planning on the form and in the manner prescribed by the Director of Planning. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

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

1. The applicant's name, mailing address, and if available, e-mail address.
2. A 24-hour or nighttime contact phone number.
3. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card, or certified birth certificate).
4. The physical address and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed cultivation will be located.
5. Proof of ownership of premises, or if the premises on which the cultivation is to occur is rented or leased, written permission from the property owner containing the owner(s)' notarized signature that authorizes the tenant or lessee to cultivate medical cannabis at the site.
6. A site map showing the location of the cultivation.
7. Evidence demonstrating that the cultivation will take place in an area one hundred (100) square feet total canopy area or less, and will not exceed ten (10) feet in height.
8. Such other information as the Director of Planning may require.

7.95.060 Review of application for personal medical cannabis permit.

A. The Appropriate Authority shall review the application for a personal medical 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.

B. An application shall not be deemed complete unless all required application fees have been paid.

C. Each personal medical cannabis permit shall be granted for a one year period and shall expire one (1) year after the date of its issuance.

D. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall grant the application if:

1. The proposed personal medical cannabis cultivation will comply with all laws, regulations and ordinances of the State and the Monterey County Code; and

2. The proposed personal medical cannabis cultivation will comply with all provisions of this Chapter, including but not limited to the personal medical cannabis cultivation requirements set forth in section 7.95.100.

E. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall deny any application that meets any of the following criteria:

1. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application;

2. The applicant is less than eighteen (18) years of age;

3. The applicant proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis;

4. The proposed personal medical cannabis cultivation does not comply with all laws, regulations and ordinances of the State and the Monterey County Code; or

5. The proposed personal medical cannabis cultivation does not comply with the requirements of this Chapter.

F. If the Appropriate Authority intends to deny the application, the Appropriate Authority shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.070 Personal medical cannabis permit renewal process and grounds for denial.

A. Each personal medical cannabis permit shall expire one (1) year after the date of its issuance. Any permit may be renewed by the Appropriate Authority upon the submission of a renewal application by the permittee and upon determination by the Appropriate Authority that the application meets the standards for grant of application pursuant to section 7.95.060.

B. Any application for renewal shall be filed with the Resource Management Agency/Planning at least thirty (30) calendar days before expiration of the personal medical cannabis permit. If any of the documentation and information supplied by the applicant pursuant to section 7.95.050 has changed since the grant of the permit, applicant shall submit updated information and documentation with the application for renewal and shall provide such other information as the Director of Planning may require.

C. Any application for renewal shall be denied if:

1. The application is filed fewer than thirty (30) calendar days before its expiration;
2. The permittee fails to conform to the criteria set forth in this Chapter; or
3. The personal medical cannabis permit is suspended or revoked at the time of the application.

D. If a renewal application is denied, an applicant may file a new application pursuant to this Chapter.

E. An application shall not be deemed complete unless all required application fees have been paid.

F. If the Appropriate Authority intends to deny the renewal, the Appropriate Authority shall specify in writing the reasons for the denial of the renewal, and notify the permittee that the decision shall become final unless the permittee seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.080 Fees.

The filing of an application for a personal medical cannabis permit, for renewal of a personal medical 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. Permit 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.

7.95.090 Personal medical cannabis permit nontransferable.

A. A personal medical cannabis permit does not create any interest of value and is not transferable.

B. A personal medical cannabis permit is issued to and covers only the qualified patient or primary caregiver identified on the permit with respect to the premises identified on the permit. The personal medical cannabis permit does not run with the land.

7.95.100 Personal medical cannabis cultivation requirements.

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

A. The personal medical cannabis cultivation shall not exceed one hundred (100) square feet of total canopy area and shall not exceed ten (10) feet in height.

B. No cannabis odors shall be detectable from offsite, and the use of odor prevention devices, such as a ventilation system with a carbon filter, shall be utilized if necessary.

C. No medical cannabis or medical cannabis products shall be visible from the exterior of the premises.

D. Unless fully enclosed within an accessory structure, all personal medical cannabis cultivation shall be contained within a fully enclosed locked fence area and shall maintain the following minimum setbacks from property lines:

1. Front: fifty (50) feet or behind the main structure;
2. Side: thirty (30) feet; and
3. Rear: thirty (30) feet.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

F. In no case shall any hazardous, flammable, or explosive substances be used in conjunction with medical cannabis on the premises.

G. Grow lights in a residence or a detached accessory building shall not exceed 1200 watts total.

7.95.110 Suspension or revocation of personal medical cannabis permit.

Any of the following shall be grounds for suspension or revocation of a personal medical cannabis permit, based on substantial evidence and following notice and public hearing pursuant to Section 7.95.120 of this Chapter.

A. The personal medical cannabis permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;

B. Any act or omission by a permittee in contravention of the provisions of this Chapter;

C. Any act or omission by a permittee in contravention of State law or the Monterey County Code;

D. Conduct of the permittee in a manner that constitutes a nuisance, where the permittee has failed to comply with reasonable conditions to abate the nuisance; or

E. Failure to comply with one or more of the terms and conditions of the personal medical cannabis permit.

7.95.120 Procedure for suspension or revocation.

A. If the Appropriate Authority determines that grounds for suspension or revocation of the personal medical cannabis permit exists pursuant to Section 7.95.110 of this Chapter, the Appropriate Authority shall issue a written Notice of Intention to revoke or suspend the permit, as the case may be. The Notice of Intention shall be served on the permittee, as reported on the permit. The Notice of Intention shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter. The Notice of Intention shall describe the property, the intention to revoke or suspend the permit, the grounds for revocation or suspension, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the permittee of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the permit should not be suspended or revoked, and shall notify them of the ten (10) day deadline to submit a written request for a hearing.

B. The permittee shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the personal medical cannabis permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Appropriate Authority may suspend or revoke the permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the Appropriate Authority shall set a date for a hearing to be held within sixty (60) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the personal medical cannabis permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. The Hearing Officer may postpone the hearing date upon good cause shown, continue the hearing during the course of the hearing, and make such other procedural orders and rulings as he or she deems appropriate during the course of the hearing.

5. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.

E. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney fees.

F. If neither permittee nor their authorized representatives appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.95.130 Service requirements.

Wherever this Chapter requires the County to serve notice to an applicant or permittee, such notice shall be given by the Appropriate Authority, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the physical address of the premises on the date of the mailing of notice.

7.95.140 Enforcement and penalties.

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

A. 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.

B. 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.

C. 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, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical cannabis activity or persons related thereto, or associated with, the commercial medical cannabis activity.

7.95.150 Operative date.

This Chapter shall become operative only if the ordinance amending Title 21 relating to medical cannabis uses becomes operative and only if the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this Chapter becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

7.95.160 Severability

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

SECTION 2. 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 3. EFFECTIVE DATE AND OPERATIVE DATE.

This ordinance shall become effective on the thirty-first day following adoption, but this ordinance shall not become operative unless the ordinance amending Title 21 relating to medical cannabis uses becomes operative and unless the Board of Supervisors submits a County tax on commercial cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this ordinance becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

PASSED AND ADOPTED this 19th day of July, 2016, by the following vote:

AYES: Supervisors Phillips, Salinas and Potter

NOES: Supervisor Parker

ABSTANE: Supervisor Armenta

 /s/ Jane B. Parker
Chair,
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board

By: /s/ Gail T. Borkowski

APPROVED AS TO FORM:

 /s/ Wendy S. Strimling

WENDY S. STRIMLING
Senior Deputy County Counsel