



Monterey County

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Board Report

Legistar File Number: RES 17-041

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Matter Type: BoS Resolution

Adopt a resolution authorizing the Monterey County Sheriff's Office to receive and access state and federal level summaries of criminal history information for the issuance and monitoring of medical cannabis regulatory permits.

(REF150048/Resolution - Cannabis Permitting background checks, County-wide)

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution (**Attachment A**) authorizing the Monterey County Sheriff's Office to access state and federal level summaries of criminal history information for the issuance and monitoring of medical cannabis regulatory permits.

SUMMARY:

In July 2016, the Board of Supervisors adopted new regulations to require all commercial medical cannabis operations to obtain a use permit and a commercial medical cannabis business permit to operate. Monterey County Code Chapter 7.90 controls the business permits. Section 7.90.060.E requires denial of applications for a business permit if certain criteria apply. One of those criteria includes if any property owners, supervisors, employees, and persons having a ten percent or more financial interest in the commercial medical cannabis activity has been convicted of a felony or drug related misdemeanor within the past ten years (Section 7.90.060.E.2). As such, the Sheriff's Office needs to obtain criminal history to verify this information before any permits can be issued.

Penal Code Section 11105(b)(11) allows the State Attorney General, through the California Department of Justice (DOJ), to provide the criminal histories to the County if:

- Access is needed in order to assist the County in implementing a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person, and contains requirements or exclusions expressly based on that conduct; and
- The Board of Supervisors specifically authorizes the County, its officers and/or officials to access the criminal history information in order to fulfill licensing or certification duties.

Procedurally, the Sheriff's Office collects fingerprints through the LiveScan system located at the Sheriff's Office. Those finger prints are electronically submitted to the DOJ with a request for criminal history information. The DOJ also transmits the fingerprint images and related information to the Federal Bureau of Investigation (FBI). After the DOJ and FBI gather the criminal history information, a summary of criminal history is provided to the Sheriff's Office.

In order to submit applicant fingerprints through Livescan to receive criminal history information, an agency must have an Originating Agency Identifier (ORI) and be authorized as

a custodian of records. The Sheriff's Office already has an ORI and is an authorized custodian of records, but pursuant to above and FBI requirements the Sheriff's Office needs to amend its access permission to specifically obtain criminal history information for medical cannabis permitting.

The DOJ has provided a sample resolution containing the language and wording desired to obtain approval for summary criminal history information under the relevant Penal Codes. The attached resolution reflects the DOJ sample resolution.

The resolution must be adopted by the Board of Supervisors and accepted by the DOJ in order to obtain necessary permissions to receive criminal history information needed to fulfill permitting duties pursuant to Chapter 7.90 of the Monterey County Code.

On March 7, 2017, consideration of this resolution was removed from the Board of Supervisor's consent agenda at the request of Chair of the Board. On March 20, 2017, the Board of Supervisors ad hoc committee on marijuana discussed concerns with the resolution which primarily included "requiring" denial of applications for those applicants with "drug-related misdemeanors" that do not meet the criteria contained in Section 7.90.060.E.2. The ad hoc committee recommended that staff bring the resolution back to the Board for approval which will allow the Sheriff's Office to proceed in obtaining the necessary permission from the DOJ to implement the Code. There was discussion regarding amending the criminal history criteria in Section 7.90.060.E.2 so that there could be consideration of circumstances (e.g. domestic violence versus drug trafficking). If the Board desires to change the existing criminal history criteria in the Code, an ordinance amending the criteria would need to be adopted by the Board.

OTHER AGENCY INVOLVEMENT:

The Resource Management Agency has assisted the Sheriff's Office in preparation of this report and the report has been reviewed by the Office of County Counsel.

FINANCING:

Funding for staff time associated with this project is included in the FY16-17 Adopted Budget for the Sheriff's Office and RMA-Planning. The Sheriff's Office will collect fees for fingerprinting services including fees charged for services by the Department of Justice.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Board of Supervisors FY 15-16 Strategic Initiatives include objectives to:

- Improve efficiency and effectiveness of County services (Administration); and
- Create a safe environment (Public Safety).

Authorizing the Sheriff to do criminal background checks will assist the RMA with discretionary permitting services for cannabis business permit applicants. Background checks are needed to implement Federal enforcement priorities for non-diversion of cannabis and to ensure that revenue from cannabis operations does not finance illegal activities or organized crime.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: Carl P. Holm, AICP, RMA Director
Approved by: Stephen Bernal, Sheriff

This report was reviewed by Kelly Donlon, Deputy County Counsel

The following attachments are on file with the Clerk of the Board:
Attachment A - Draft Resolution

cc: Front Counter Copy; Craig Spencer, Senior Planner; Matt Luther, Commander; California Department of Justice