

ORDINANCE NO. _____

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

County Counsel Summary

This ordinance amends Chapter 7.90 of the Monterey County Code to add a definition of “operator” as a person or persons who participates in the direction, control, or management of a commercial cannabis operation, and requires that operators submit to a criminal background check before obtaining a commercial cannabis permit. The ordinance removes the requirement that property owners, supervisors, and employees submit to a criminal background check. The ordinance also removes the requirement that property owners have no felony convictions or drug related misdemeanor convictions reclassified by Section 1170.18 of the California Penal Code within the past ten years. Also, the ordinance allows owners, operators, and persons having a 20% or more financial interest in a commercial cannabis activity to undergo Live Scan fingerprinting at any entity authorized by the California Department of Justice to provide Live Scan services. Finally, this ordinance adds a requirement that permittees must keep a roster of all employees, the employees’ dates of birth, and verification that the employees do not have a felony or a drug related misdemeanor conviction reclassified by Section 1170.18 of the California Penal Code within the past ten years.

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

SECTION 1. Section 7.90.030 of the Monterey County Code is amended to read as follows:

The following words and phrases shall have the meanings set forth below when used in this Chapter. The definitions in Chapter 20.67 for the coastal zone and Chapter 21.67 for the inland zone shall otherwise apply.

A. “A-designation” means a designation placed on a County permit issued pursuant to this Chapter for cannabis or cannabis products that are intended for adults who are twenty-one (21) years of age and over and who do not possess a physician’s recommendation.

B. “Applicant” means an owner applying for issuance, renewal, or modification of a permit issued pursuant to this Chapter.

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

D. “Appropriate Authority” means the Monterey County Cannabis Program Manager or his or her designee.

E. "California Cannabis Authority" is a joint powers authority, of which Monterey County is a member, established among California counties to create a comprehensive data platform that tracks cannabis data through a chain of production to consumption; to track payments among commercial partners and to various state, local agencies, and other commercial cannabis participants; and to provide data analytics designed to support local cannabis regulatory and tax compliance efforts.

F. "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" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

G. "Cannabis product" has the same meaning as in Section 11018.1 of the California Health and Safety Code.

H. "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.

I. "Commercial cannabis activity" means the cultivation, possession, manufacture, processing, storing, laboratory testing, packaging, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product.

J. "Commercial cannabis permit" means a permit issued by the County to an applicant to perform commercial cannabis activities under this Chapter.

K. "Commercial cannabis operation" means an entity that engages in commercial cannabis activities.

L. "County" means the County of Monterey.

M. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform operated or controlled by the retailer.

N. "Financial interest" means an investment into a commercial cannabis operation, a loan provided to a commercial cannabis operation, or any other fully vested equity interest in a commercial cannabis operation. The following persons are not considered to hold a financial interest:

1. A bank or financial institution whose interest constitutes a loan;
2. Persons whose only ownership interest in the commercial cannabis operation is through an interest in a diversified mutual fund, blind trust, or similar instrument;
3. Persons whose only financial interest is a security interest, lien, or encumbrance on the property that will be used by the commercial cannabis operation; and
4. Persons who hold a share of stock that is less than five percent (5%) of the total shares in a publicly traded company.

O. "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.

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

Q. "M-designation" means a designation placed on a County permit issued pursuant to this Chapter for cannabis or cannabis products that are intended for to be sold for use pursuant to the Compassionate Use Act of 1996 (Section 11362.5 of the California Health and Safety Code) by patients who possess a physician's recommendation.

R. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Section 11362.5 of the California Health and Safety Code) by a medicinal cannabis patient in California who possesses a physician's recommendation.

S. "Operator" means the person or persons who participates in the direction, control, or management of the commercial cannabis operation. Such management activities include, but are not limited to, the following: hiring and staffing; training new employees; developing existing employees; monitoring business performance, expenses and budgets; and planning and goal setting.

T. "Owner" means any of the following:

1. A person with an aggregate ownership interest of twenty percent (20%) or more in the commercial cannabis operation applying for a permit, unless the interest is solely a security, lien, or encumbrance.

2. The chief executive officer of a nonprofit or other entity.

3. A member of the board of directors of a nonprofit.

4. An individual who will be participating in the direction, control, or management of the person applying for a permit.

U. "Permittee" means a person issued a County permit under this Chapter.

V. "Person" means an individual, firm, sole proprietorship, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

W. "Premises" means the building, greenhouse, or outdoor area in which commercial cannabis activities are operated and, in addition, any accessory structures and appurtenant areas.

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

Y. "Property owner" means the individual or entity who is the record owner of the subject property where commercial cannabis activities are located or are proposed to be located.

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

AA. "State" means the state of California.

BB. "State license" means a state license issued pursuant to California Business & Professions Code Section 26000, *et seq.*

SECTION 2. Subsection 7 of Subsection C of Section 7.90.050 of the Monterey County Code is amended to read as follows:

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

SECTION 3. Subsection 8 of Subsection C of Section 7.90.050 of the Monterey County Code is amended to read as follows:

Attachment 2

8. All owners, operators, 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.

SECTION 4. Subsection 10 of Subsection C of Section 7.90.050 of the Monterey County Code is amended to read as follows:

10. Written proof (i.e., California driver's license, California identification card, or certified birth certificate) that all owners, operators, and employees are twenty-one (21) years of age or older.

SECTION 5. Subsection 2 of Subsection E of Section 7.90.060 of the Monterey County Code is amended to read as follows:

2. Any owner, operator, employee, or persons having a twenty percent (20%) or more financial interest in the commercial cannabis activity has 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;

SECTION 6. 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 permit on the premises. Each commercial cannabis operation that engages in delivery or transportation shall carry a copy of the permit 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 on the premises.
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 the name, telephone number, facsimile 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, operators, employees, or persons having a twenty percent (20%) or more financial interest must submit their information to the Appropriate Authority pursuant to Section 7.90.070 of this Chapter.

18. All owners, operators, 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 (1) inch in width and one and one half (1.5) inches in height.

19. No owners, operators, 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 land use entitlements as required by Titles 20 and 21 of the Monterey County Code and the land use entitlements must be operative.

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, ordinances and regulations, 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.

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. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of _____, 2020, by the following vote:


AYES:
NOES:
ABSENT:

Christopher M. Lopez, 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
Deputy County Counsel