



Monterey County

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Board Report

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Public hearing to consider adoption of amendments to Article I.E (Health Department), Article IX (Resource Management Agency-Planning), and Article XVII (County Counsel) of the Monterey County Fee Resolution to add new fees for Commercial Cannabis permits, and to amend Article IX of the Monterey County Fee Resolution to add a new fee for Personal Cannabis permits.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a resolution (**Attachment A**) amending Article I.E (Health Department), Article IX (Resource Management Agency-Planning), and Article XVII (County Counsel) of the Monterey County Fee Resolution to add new fees for Commercial Cannabis permits and to amend Article IX of the Monterey County Fee Resolution to add a new fee for Personal Cannabis permits.

SUMMARY:

The proposed action would establish application fees for commercial cannabis permits and personal cannabis permits. Commercial and personal medical cannabis permits were created by ordinances the Board adopted on July 19, 2016. Per the proposed amendments, the commercial cannabis permit fee is proposed to be based on actual time spent by staff in the Resource Management Agency -Planning, Environmental Health Bureau, and County Counsel processing applications for these permits. The personal cannabis permit fee is proposed as a flat fee, covering the estimated reasonable cost of RMA processing the permit. Existing fees for other services that may come into play (for example, Sheriff's costs for background checks, EHB costs for inspections) would be based on their existing fee schedules. Staff is proposing no new fees for use permits and coastal development permits for commercial marijuana activities, as such permits would be charged based on existing application fees for use permits and coastal development permits.

DISCUSSION:

On July 12, 2016, the Board of Supervisors adopted an ordinance amending Title 21 (non-coastal zoning ordinance) and adopted a resolution of intent to amend Title 20 (coastal zoning ordinance) of the Monterey County Code, to require use permits and coastal development permits respectively for commercial medical marijuana activities, including cultivation, manufacturing, testing, delivery and transport. On July 19, 2016, the Board adopted ordinances adding Chapters 7.90 and 7.95 to the Monterey County Code. Chapter 7.90 requires commercial medical cannabis operations to obtain an annual permit to conduct commercial medical cannabis activities, including cultivation, dispensaries, manufacturing, testing, transportation, and distribution in accordance with state law. (**Attachment B.**) Chapter 7.95 requires individuals to obtain 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. (**Attachment C.**)

Currently, the Monterey County Fee Resolution does not have application fees for commercial or personal cannabis permits. Staff from county departments responsible for reviewing applications associated with Chapters 7.90 and 7.95 met several times to analyze the level of effort expected for processing each new permit. Departments involved in these meetings included: Resource Management Agency (RMA), County Counsel, County Sheriff, Agricultural Commissioner, Water Resources Agency, and Health Department. These discussions have resulted in proposed amendments to Articles IX (RMA-Planning), XVII (County Counsel), and I.E (Health Department) establishing fees which do not exceed the estimated reasonable costs of providing these permit application review services. Sheriff and Environmental Health would charge their existing approved fees for services outside of the application review when required (e.g., Sheriff's fee for background checks.)

Following, is the outcome and recommended direction for each permit type:

Use Permit (Inland) & Coastal Development Permit (Coastal) for Commercial Medical Cannabis Activities

Use Permits for commercial medical cannabis activities will be issued on a one-time basis, and will run with the land like a typical land use permit. Based on group staff discussion, the expectation is that processing Use Permits (Inland and Coastal) for commercial medical cannabis activities will require roughly the same staff tasks and hours as a Use Permit under Title 21 and Coastal Development Permit under Title 20 of the Monterey County Code. Staff recommends relying on the general Use Permit and Coastal Development Permit application fees that currently exist in the Monterey County Fee Resolution for the related cannabis use permits. Current fees are \$8,214.27 for a Use Permit and \$9,020.35 for a Coastal Development Permit, which includes the fee for land use agencies (RMA-Planning, RMA-Public Works, RMA-Environmental Services, Environmental Health, Water Resources Agency, and County Counsel). This fee is collected by the RMA and distributed amongst the other land use departments, per the fee articles already adopted by the Board of Supervisors. Staff also recommends that any applicable secondary Use Permit fees remain the same as currently adopted (eg: Condition Compliance, Appeals, etc.). It is important to note that until the Coastal Commission certifies and the Board then formally adopts the Title 20 medical cannabis amendments, any Coastal Development Permit would be processed under County's existing regulations.

Commercial Medical Cannabis Permit

The Commercial Medical Cannabis Permit is required under Chapter 7.90 for commercial medical cannabis operations to conduct commercial medical cannabis activities, including cultivation, dispensaries, manufacturing, testing, transportation, and distribution in accordance with state law. The permit must be renewed annually and is tied to the business operator. It does not run with the land. This permit has also been called the "Business Permit" in previous meetings and reports. Based on group discussion, the only County departments expected to be directly involved in the review

of applications for this permit will be: RMA, Health Department, and County Counsel. Given the newness of this permit type, inability to predict the amount of time to process the permit, and the various types of businesses that must apply for it, the fees for review of the initial application and renewal are proposed to be billed based on actual time spent, with a deposit to be collected up front. This structure will ensure that the application fee tracks the actual cost of processing the permit. The deposit amount for an initial Commercial Cannabis Permit Application is proposed to be \$4,474.00. For annual renewal, which is anticipated to require a less intensive review, the deposit amount is proposed to be \$1,028.00. It should be noted that this lower cost for the deposit for the annual renewal is for permit holders who have had no code violations or change of ownership over the one year period. Code violations or changes in ownership may necessitate a complete re-submission of a Commercial Cannabis Permit application and payment of the initial permit application fee. A breakdown of each county department's portion of these fees can be found in the amended Articles incorporated as part of the attached Resolution (**Attachment A**). More specific justifications for each fee article amendment by department are as follows:

RMA

The RMA, acting as the lead agency coordinating the cannabis permitting process, has based its fee deposit on an estimated time of approximately eight hours for review and processing of initial applications. The hourly rate is a blended fully burdened labor rate of \$175.20 per hour, the same rate as in RMA-Planning's fee schedule approved by the Board in 2015. These eight hours are spread across: Administering the application process, coordinating and routing to others for review, review of application materials, verify zoning clearances, researching state license status, correspondence with the applicant, and preparation of any applicable reports for permit issuance/denial. The renewal deposit fee is based on an estimated time of approximately three hours for review and processing of applications, assuming no violations or change in ownership.

Health Department

Environmental Health's proposed deposit fees are for review of the initial application, which could involve mandatory inspections and assessments from members of Solid Waste Management Services, Hazardous Materials Management Services, Drinking Water Protection Services, Consumer Health Protection Services, Recycling and Resource Recovery Services and Environmental Health Review Services programs. These assessments will determine the Medical Cannabis Business permit applicants' responsibilities under the California Health & Safety Code and Monterey County Code to meet program specific permit requirements for permits issued through the Environmental Health Bureau. It is estimated that each of the six Environmental Health Review Service Programs will need approximately three hours of time for review at the rate of \$146 per hour. If this review determines that Health Department specific permits are needed (for example, a Retail Food Facility Permit for a 'Tier 1 Bakery' at \$585.00 per year), such permits and associated permit fees would be in addition to the deposit for commercial medical cannabis permit review. The renewal deposit fee is based on needing only approximately two hours total for review of applications, assuming no violations or change in ownership.

County Counsel

County Counsel's proposed deposit is based on two hours of processing time for the initial commercial medical cannabis permit for each operator and one hour of processing time for a renewal of that permit. The hourly rate for the deposit is a blended fully burdened labor rate of \$212 per hour, the same rate as in County Counsel's fee schedule approved by the Board in 2015. The number of hours is the estimated expected time required to advise staff on legal issues associated with processing the permit; the deposit is the amount to be paid up front, but the ultimate fee will be based on the actual time spent multiplied by the fully burdened labor rate of the individual providing the service.

Personal Medical Cannabis Permit

The Personal Medical Cannabis Permit is required under Chapter 7.95 for individuals cultivating one hundred square feet total canopy area or less. It will be issued to the individual and requires annual renewal. It does not run with the land. This permit has also been called the "Personal Permit" in previous meetings and reports. Based on group discussion, the only County land use department expected to be directly involved in the review of applications and granting of this permit will be the RMA. (It is expected that legal issues may arise that will require County Counsel advice, but in deference to keeping the cost low, County Counsel is not proposing a fee for this permit.) The Personal Medical Cannabis Permit is intended to be a simple 'over the counter' permit. The fee for initial review and granting of this permit is proposed to be a lump sum amount of \$170.00, not a deposit. No fee is proposed for annual renewal of the Personal Medical Cannabis Permit, meaning the County's General Fund would absorb any cost associated with processing the renewal. It should be noted that this free renewal is contingent on permit holders having had no code violations or change of ownership over the one year period. Code violations or changes in ownership may necessitate a complete re-submission of a Personal Medical Cannabis Permit Application and payment of the commensurate fees.

The medical marijuana ordinances will become operative only if the County's proposed tax on commercial cannabis businesses passes in November. Additionally, the ordinance amending Title 20 will need certification by the California Coastal Commission and subsequent adoption by the Board before it goes into effect. If the tax passes, the adopted ordinances will become operative on the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors, which is typically about three weeks after the election.

If the tax measure does not pass, the ordinances will not become operative, and fees for commercial medical cannabis permits and personal medical cannabis permits would not be needed at this time. However, despite this remaining uncertainty caused by the tax measure, staff is bringing recommendations for fees forward at this time. If the tax measure passes in November, the ordinances would become operative in early December, 2016. According to state law, land use application fees cannot take effect any sooner than 60 days following final adoption. Adoption of fees prior to the end of September, 2016 will allow for the immediate offset of potentially substantial new department costs associated with cannabis permit application reviews. Adoption of fees after September, 2016 could result in the county incurring these department costs for a period of time without any fees to reasonably cover them.

Assuming the ordinances becoming operative, approximately 12-18 months later, the department staff initially involved with analyzing and developing these proposed fees will re-convene to evaluate the level of effort utilized throughout the first year of implementation. The goal will be to determine the amount of time required to process the permits and to propose fee adjustments if needed. If the fees need to be adjusted, staff will return to the Board of Supervisors to recommend amending the Monterey County Fee Resolution once again.

OTHER AGENCY INVOLVEMENT:

Development of the proposed medical cannabis fees has been a countywide departmental collaboration. Accordingly, RMA staff has worked with staff from the County Administrative Office, Office of County Counsel, Department of Health, County Sheriff, and Agricultural Commissioner's Office in the preparation of this report. Additionally, staff has presented the fee structure to the Board ad hoc committee on marijuana, who expressed support for this fee structure.

FINANCING:

The proposed new fees are intended to help recapture costs associated with the provision of permitting services associated with potentially new commercial cannabis regulatory requirements. Recommended fees are no more than is necessary to cover the anticipated estimated reasonable costs of the governmental activity, and will not exceed the reasonable and actual costs to the County of providing these services. Free annual renewal of the Personal Cannabis Permit will have no impacts to the FY16-17 adopted budget because initial permits will be granted no sooner than early December, 2016. Given the minimal time needed for review of these renewals, staff anticipates being able to absorb the nominal costs associated. It is important to note that absent cost recovery through these new fees, with the exception of the Personal Cannabis Permit Renewal, substantial increases in departmental costs for services may present a significant challenge to maintaining existing levels of service in FY 2016-17 and moving forward.

Prepared by: Brandon Swanson, RMA Management Analyst III, Ext. 5334
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Development Agency, Ext. 6654
Approved by: Carl P. Holm, Director, Resource Management Agency, Ext. 5103

This report was prepared with assistance from County Counsel.

The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution with Exhibits:

Exhibit 1 - Amendment to Article IX

Exhibit 2 - Amendment to Article VXII

Exhibit 3 - Amendment to Article I.E

Attachment B - Chapter 7.90

Attachment C - Chapter 7.95

Attachment D - Existing Article IX

Attachment E - Existing Article XVII

Attachment F - Existing Article I.E

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch; John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Pharmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Steve Craig; Erin McKenna; Cheryl Bryant Bruce; Charles Rowley; Alexis Garcia; Planning File REF150048.