

Attachment H

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 21.67 OF TITLE 21 (NON-COASTAL ZONING) OF THE
MONTEREY COUNTY CODE RELATING TO COMMERCIAL CANNABIS
ACTIVITIES**

County Counsel Summary

This ordinance amends Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code related to regulation of commercial cannabis activities in the inland unincorporated area of Monterey County. This ordinance removes the existing 1500-foot setback between commercial cannabis retailers and instead requires a finding of public convenience or necessity for all commercial cannabis retailer Use Permits. This ordinance also amends the setback requirements for all commercial cannabis activities (cultivation, manufacturing, testing, distribution, and retail). This ordinance removes the 600-foot setback from drug recovery facilities and public parks for all types of commercial cannabis activities. This ordinance adds a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities. Playground is defined to include any park or recreational area specifically designed to be used by children that has play equipment installed. The ordinance maintains the 600-foot setback from schools.

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

SECTION 1. Section 21.67.010 of the Monterey County Code is amended to read as follows:

21.67.010 Definitions

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 21.06 shall otherwise apply.

A. “Bureau” means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

B. “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

C. “Cannabis product” has the same meaning as in Section 11018.1 of the California Health and Safety Code.

D. “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.

E. “Certificate of accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Within the definition of cultivation, the following specific Permit Types, corresponding to state cultivator license types set forth in California Business and Professions Code Section 26061 apply:

1. Type 1A or “specialty indoor” means indoor cultivation using exclusively artificial lighting of between five hundred one (501) and five thousand (5,000) square feet of total canopy size on one premises;

2. Type 1B or “specialty mixed-light” means cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of between two thousand five hundred one (2,501) and five thousand (5,000) square feet of total canopy size on one premises;

3. Type 1C, or “specialty cottage,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of two thousand five hundred (2,500) square feet or less of total canopy size for mixed-light cultivation, or five hundred (500) square feet or less of total canopy size for indoor cultivation, on one premises;

4. Type 2A or “small indoor” means indoor cultivation exclusively using artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

5. Type 2B or “small mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

6. Type 3A or “indoor” means indoor cultivation using exclusively artificial lighting and having a total canopy area between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises;

7. Type 3B or “mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy area of between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises; and

8. Type 4 or “nursery” means cultivation of cannabis solely as a nursery.

G. “Child care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended child care facilities, transitional kindergartens, and school age child care centers.

H. “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 owned and controlled by the retailer.

I. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed pursuant to this Chapter.

K. “Edible cannabis product” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code

L. “Greenhouse” means a fully enclosed permanent structure that is clad in transparent material with climate control, such as heating and ventilation capabilities and supplemental artificial lighting, and that uses a combination of natural and supplemental artificial lighting for cultivation.

M. “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.

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

O. “Licensee” means any person holding a state license under California Business and Professions Code Sections 26000, *et seq.*

P. “Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state license for commercial cannabis activities, or the state agency authorized to take disciplinary action against the licensee.

Q. “Manufactured cannabis” or “cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

R. “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

S. “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 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

T. “Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

U. “One ownership” and “owner” have the same definition as set forth in Chapter 21.06 of this Title.

V. “Permittee” means a person issued a Use Permit under this Chapter.

W. “Person” means an individual, firm, 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.

X. “Playground” means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

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

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. “Retailer” and “retail facility” shall have the same meaning as “Dispensary.”

BB. “State” means the State of California.

CC. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.*

DD. “Testing laboratory” means a facility, entity, or site in the state that offers or performs test of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activities in the state; and
2. Licensed by the Bureau.

EE. “Transport” or “transportation” mean the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to the California Business & Professions Code Sections 26000, *et seq.*

FF. “Volatile Manufacturing” means a manufacturing site that manufactures cannabis products using volatile solvents.

GG. “Volatile solvent” shall have the same meaning as in paragraph (3) of subsection (b) of Section 11362.3 of the Health and Safety Code, unless otherwise provided by law or regulation.

HH. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

SECTION 2. Subsection B.2 of Section 21.67.040 of the Monterey County Code is amended to read as follows:

2. Retail facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 3. Subsection B.3 of Section 21.67.040 of the Monterey County Code is amended to read as follows:

3. Retail facilities shall serve a public convenience or necessity. In determining if a retail facility will serve a public convenience or necessity, the Appropriate Authority shall:

a. Consider a report from the Monterey County Health Department concerning the proposed retail facility's impacts to long-term public health and disadvantaged communities; and

b. Find that one or more of the following criteria are met:

i. The retail facility will not result in an excessive concentration within in the census tract where the retail facility would be located. For the purposes of this Section, an excessive concentration exists when the ratio of retail facilities to population within the census tract in which the applicant premises is located exceeds the ratio of retail facilities to the population in Monterey County;

ii. The retail facility will enhance the economic viability of the area;

iii. The retail facility will serve a portion of the commercial cannabis market not served by other retail facilities in the area; or

iv. The Monterey County Sheriff's Office and the Monterey County Health Department have no objection to the retail facility.

SECTION 4. Subsection C.2 of Section 21.67.040 of the Monterey County Code is amended to read as follows:

2. The retail facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 5. Subsection C.6 of Section 21.67.040 is added to the Monterey County Code to read as follows:

6. The retail facility at the proposed location will serve a public convenience or necessity.

SECTION 6. Subsection B.4 of Section 21.67.050 of the Monterey County Code is amended to read as follows:

4. Cannabis cultivation shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 7 Subsection C.2 of Section 21.67.050 of the Monterey County Code is amended to read as follows:

2. The cultivation will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 8. Subsection B.2 of Section 21.67.060 of the Monterey County Code is amended to read as follows:

2. Cannabis manufacturing facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 9. Subsection C.2 of Section 21.67.060 of the Monterey County Code is amended to read as follows:

2. The manufacturing facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 10. Subsection B.2 of Section 21.67.070 of the Monterey County Code is amended to read as follows:

2. Cannabis testing facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 11. Subsection C.2 of Section 21.67.070 of the Monterey County Code is amended to read as follows:

2. The testing facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 12. Subsection B.2 of Section 21.67.080 of the Monterey County Code is amended to read as follows:

2. Cannabis distribution facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 13. Subsection C.2 of Section 21.67.080 of the Monterey County Code is amended to read as follows:

2. The distribution facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 14. 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 15. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Luis A. Alejo, Chair
Monterey County Board of Supervisors

A T T E S T:

Nicholas E. Chiulos
Interim Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM BY:

Wendy S. Strimling
Senior Deputy County Counsel