

# Monterey County Code Section 7.90.050(C)(8)



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- Monterey County Code Section 7.90.050(C)(8)
  - All property owners, owners, supervisors, employees, and persons having a 20% or more financial interest must submit fingerprints.
- November 20, 2019 – Board Cannabis Committee meeting
  - Public Comment
    - An interpretation issue
    - Current employees would seek other employment to avoid jeopardizing their immigration or asylum status.
    - Dispensary Property Owner has been convicted of a felony, or a drug related misdemeanor
    - Dispensary Property Owner could refuse to comply causing delays in the issuance or renewal of the cannabis business permit



## Monterey County Code Section 7.90.050(C)(8)

- December 16, 2019, Cannabis Program Enforcement Task Force meeting
- Board Cannabis Standing Committee – January 22, 2020
  - Public comment:
    - Operator responsibility to establish security plan to deter theft
    - Substantial diversion would require owner/supervisor complicity
    - Monterey County is cultivation oriented, which represents a different workforce than other jurisdictions
    - Cannabis code should follow state liquor law, which prevents owners with felony records from profiting from the industry
  - Direction to present to the full Board
  - Recommend a stakeholder meeting



# Monterey County Code Section 7.90.050(C)(8)

- Preliminary Research
  - Mendocino County
    - “Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry.”
    - Currently reviewing requirement.
  - Santa Barbara County
    - Requires all employees to be background checked equivalent to the standards of a Live Scan. The burden rests with the employers, who is required to establish procedures and maintain records, which is reviewed by the Sheriff’s Office during the business license process.
  - Monterey County Cities requiring employee background checks
    - Del Rey Oaks (LiveScan)
    - Gonzales (Unspecified)
    - King City (LiveScan)
    - Marina (LiveScan)
    - Salinas (LiveScan)



## Monterey County Code Section 7.90.050(C)(8)

- “Cannabis Industry Stakeholder Session”
  - Limit discussion to Employee and Property Owner Live Scan requirement
    - Gain input and possible solutions



# Monterey County Code Section 7.90.050(C)(8)

## District Attorney's Position on Requiring Live Scan

- Deters those with criminal records
- Discourages employees from failing to obtain worker compensation insurance or failing to pay unemployment taxes
- Prevents the hiring of individuals under 21 years of age
- Provides law enforcement with necessary tool to conduct investigations
- Sets Monterey County as the 'gold standard' in the State and provides an example of best practices.



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## District Attorney's Position on Requiring Live Scan (cont.)

- Local crime related to cannabis
  - Several robberies of licensed grow operations, these “inside jobs” will remain a problem for the industry
  - Numerous cases of employees in the industry not being covered by worker's comp insurance
  - Human trafficking of contracted labor crews
  - Underage employees as part of contracted labor crews and regular employees



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## District Attorney's Position on Requiring Live Scan (cont.)

- Compelling Reasons for Live Scan
  - Originally written as part of the overall scheme of enforcement
  - Live Scan is cost efficient
  - Live Scan continues checking after application
  - Cannabis industry arguments
    - Insufficient supply of employees
      - Response
    - State does not require Live Scan
      - Response



# Monterey County Code Section 7.90.050(C)(8)

## District Attorney's Position on Requiring Live Scan (cont.)

- Background Check – Comparison of Three Approaches
  - **Live Scan.**
    - Automated system that checks state and federal criminal history information
    - Information is sent to the Originating Agency Identifier
    - Least resource intensive approach
    - Most reliable and most thorough



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## District Attorney's Position on Requiring Live Scan (cont.)

- Background Check – Comparison of Approaches
  - **Manual background check**
    - Individually research through criminal database
      - Challenges with individual names (duplications)
      - Cross-referencing with other judicial records
      - Outside the State would not be captured
    - Least comprehensive approach, most labor intensive



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## District Attorney's Position on Requiring Live Scan (cont.)

- Background Check – Comparison of Approaches
  - **Private Alternative**
    - Employers to submit employees to criminal background checks through a private company.
      - Needs further research



# Monterey County Code Section 7.90.050(C)(8)

## District Attorney's Position on Requiring Live Scan (cont.)

- Property Owner requirement
  - Concern of improper influence
  - Property Owner situations vary
    - Some owners physically live or work outside of Monterey County
    - Some owners are large investment groups that lease out to a single or multiple tenants
  - Waiver option that will be addressed later in the presentation



## Monterey County Code Section 7.90.050(C)(8)

- Four options for the Employee Live Scan
  1. Leave as is, all employees must submit Live Scan application
  2. Remove the employee Live Scan requirement
  3. Add a new section that grants the Appropriate Authority the ability to grant a waiver of the Live Scan requirement for some employees
  4. Remove employee Live Scan requirement but amend Chapter 7.90 to add the requirements of obtaining and maintaining employee documentation and require sharing that information with local law enforcement.



## Monterey County Code Section 7.90.050(C)(8)

- Options 1 and 2 for the Employee Live Scan
  1. Leave as is, all employees must submit Live Scan application
  2. Remove the employee Live Scan requirement



## Monterey County Code Section 7.90.050(C)(8)

- Option 3 for the Employee Live Scan  
Add a new section that grants the Appropriate Authority the ability to grant a waiver of the Live Scan requirement for employees upon a written application demonstrating good cause to the Cannabis Program.
  - Good cause examples: immigration consequences as documented in a signed agreement.
  - Limited to 10 waivers per Cannabis Business Permit annual term.
  - Allow Appropriate Authority to amend the number through a policy change, if necessary.
  - Appropriate Authority can consult with the District Attorney's Office to provide information for waiver determination.



## Monterey County Code Section 7.90.050(C)(8)

- Option 4 for the Employee Live Scan  
Eliminate Live Scan requirement but Amend Chapter 7.90 to add the requirements of obtaining and maintaining employee documentation and require sharing that information with local law enforcement.
  - Information would be required as part of the CNB application and part of the employee “identification” badge.
  - This option would likely require an augmentation of at least one FTE capable of accessing and reviewing criminal history information.



## Monterey County Code Section 7.90.050(C)(8)

- Three options for the Property Owner Live Scan
  1. Leave as is, all owners must submit Live Scan application
  2. Remove the property owner Live Scan check requirement
  3. Add a new section that grants the Appropriate Authority the ability to grant a waiver of the Live Scan requirement for Property Owners upon a written application demonstrating good cause.
    - An evaluation of good cause criteria that will address unfair refusal by a Property Owner.
    - Criteria would include situations where the Property Owner is physically unavailable or refuses to participate after two written request from applicant.
    - Each business entity will be limited to two waivers per Cannabis Business Permit annual term.



# Questions

