

..Title

Introduce, waive reading, and set March 17, 2020 at 10:30 a.m. as the date and time to consider adoption of an ordinance amending Chapter 7.90 of the Monterey County Code to modify commercial cannabis permit requirements concerning criminal background checks.

..Report

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Introduce, waive reading, and set March 17, 2020 at 10:30 a.m. as the date and time to consider adoption of an ordinance amending Chapter 7.90 of the Monterey County Code to modify commercial cannabis permit requirements concerning criminal background checks.

SUMMARY/DISCUSSION:

Chapter 7.90 of the Monterey County Code controls the issuance, modification, renewal, and operational requirements for a cannabis business to hold a commercial cannabis permit. This permit has an annual term and can be obtained after a property owner obtains all necessary land use entitlements for the applicable commercial cannabis activity, and complies with the application requirements.

Based on direction from the Board of Supervisors, staff has prepared an ordinance amending Chapter 7.90 to remove the requirement that property owners, supervisors, and employees submit to a criminal background check before obtaining a commercial cannabis permit. Owners and persons having a 20% or more financial interest must still undergo a criminal background check.

“Financial interest” is defined in Chapter 7.90 and is identical to the California Department of Food & Agriculture’s (“CDFA”) definition of financial interest. (3 CCR § 8103). The definition reads:

“[A]n 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.”

The definition of “owner” has been updated and is defined as any of the following: (1) a person with an aggregate ownership interest of 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; or (4) an individual who will be participating in the direction, control, or management of the person applying for a permit, which includes any of the following: (a) a partner of a commercial cannabis operation that is organized as a partnership; (b) managing member of a commercial cannabis operation that is organized as a limited liability company; and (c) an officer or director of a commercial cannabis operation that is organized as a corporation. This definition matches CDFA’s definition of owner contained in its regulations. (3 CCR § 8103).

Additionally, staff added a definition for the term “manager” to mean: “any individual who participates in the day-to-day direction, control, and management of the commercial cannabis operation.” The ordinance requires that managers also undergo a background check.

In lieu of the employee criminal background check, the ordinance amends Chapter 7.90 to require a permittee to keep a roster on the premises that contains the names and dates of birth of all employees, and a statement that the permittee has verified that all employees are free of a felony conviction or a drug related misdemeanor conviction reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past 10 years.

The ordinance removes the requirement that property owners obtain a background check. However, if a property owner has a financial interest in a business, that person will still need to undergo a background check if they meet the definition of “owner” or if they have a 20% or more financial interest in the operation. Presumably, this would not apply to property owners who are simply collecting rent from a tenant.

Finally, the ordinance removes the requirement that owners, managers and persons having a 20% or more financial interest in a commercial cannabis activity undergo Live Scan fingerprinting at the Monterey County Sheriff’s Office. Such persons can now undergo Live Scan fingerprinting at any entity authorized by the California Department of Justice to provide Live Scan services.

A redlined and clean version of the ordinance are attached to this report. Staff has also attached Ordinance No. 5320, which is the last ordinance amending Chapter 7.90.

OTHER AGENCY INVOLVEMENT:

The draft ordinance has been shared with all departments involved in the Cannabis Program.

FINANCING:

Monterey County’s Cannabis Program is funded through County Administrative Office – Department 1050, Intergovernmental and Legislative Affairs Division – Unit 8054, Cannabis. The proposed amendments to Chapter 7.90 will not incur additional expenses to the Program.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

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

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Reviewed by: Kelly L. Donlon, Deputy County Counsel

Approved by: Nicholas E. Chiulos, Assistant CAO

Attachments:

- 1: Draft ordinance (redlined version)
- 2: Draft ordinance (clean version)
- 3: Ordinance No. 5320