



Legislation Details (With Board Report)

File #: ORD 21-017 **Name:**

Type: Ordinance **Status:** General Government - Consent

File created: 10/6/2021 **In control:** Board of Supervisors

On agenda: 10/26/2021 **Final action:**

Title: Adopt an ordinance amending Chapter 7.90 of the Monterey County Code to allow permitted cultivators to modify the total canopy area of any cultivation or nursery operation in their commercial cannabis permit on two occasions during the permit's annual term if certain criteria are met.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Draft ordinance (redline version), 3. Draft ordinance (signed clean version), 4. Completed Board Order Item No. 36

Date	Ver.	Action By	Action	Result
10/19/2021	1	Board of Supervisors	continued	

Adopt an ordinance amending Chapter 7.90 of the Monterey County Code to allow permitted cultivators to modify the total canopy area of any cultivation or nursery operation in their commercial cannabis permit on two occasions during the permit's annual term if certain criteria are met.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

Adopt an ordinance amending Chapter 7.90 of the Monterey County Code to allow permitted cultivators to modify the total canopy area of any cultivation or nursery operation in their commercial cannabis permit on two occasions during the permit's annual term if certain criteria are met.

SUMMARY

The Cannabis Program ("Program") holds monthly meetings to discuss cannabis industry concerns and share information. At the August 23, 2021 industry meeting, permittees cited a substantial decline in wholesale commercial cannabis pricing being experienced locally and throughout California. These collective concerns were voiced at the August 24, 2021 Board of Supervisors ("BoS") meeting via public comment, along with a request from the public that an ordinance be considered to provide tax relief to operators due to this loss of revenue. Several letters were also sent as public comment to the BoS. The industry's input corresponded to recent articles found in the MJ Biz Daily dated August 6, 2021 and the Press Democrat dated August 27, 2021 respectively.

Monterey County imposes an annual business tax on cannabis businesses pursuant to Monterey County Code Chapter 7.100 and such tax is collected by the Treasurer-Tax Collector's Office ("TTC"). This tax is imposed on a fiscal year basis and is due and payable in quarterly installments. The tax liability for permittees is determined by the canopy self-designated in their annual registration form or the Commercial Cannabis Permit ("CNB").

Permittees are assessed \$8.00 per square foot of indoor canopy, \$5.00 per square foot of mixed light canopy, and \$1.00 per square foot of nursery canopy. Pursuant to Monterey County Code Chapter 7.90, permittees may

modify the canopy limit allowed by their registration form or CNB one time during the annual term.

Staff has prepared a retrospective on the ability of the California Cannabis Authority (“CCA”) to work with the Program and local industry through analysis and real-time data reports. Staff also reviewed prior policy decisions, including amendments, current cultivation figures, and corresponding tax revenues. Staff has identified modifications approved in prior years and the implications of permitting additional modifications. Based on the BoS direction, a draft ordinance amending Chapter 7.90 to allow permitted cultivators to modify the total canopy area of any cultivation or nursery operation in their commercial cannabis permit on two occasions during the permit’s annual term if certain criteria are met. This proposed change would increase operator flexibility for canopy registration. The ordinance also makes updates to streamline administrative processes of the commercial cannabis permit.

The Program is mindful of these considerations for the BoS to review in determining relevance to the proposed policy change to Monterey County Code Chapter 7.90. The amendment would impact multiple County departments in relation to staff time and related costs. This proposed amendment reiterates the need for a well-coordinated Cannabis Program with efficient use of staff time combined with our industry’s solid business plans. Lastly, the additional modification to square footage would likely decrease commercial cannabis tax revenue for the current and future fiscal years. The industry proposes to decrease square footage in the winter months and, if feasible, increase during the spring. The Program will carefully need to monitor and provide updates to the BoS Cannabis Committee on changes to projected commercial cannabis tax revenue.

The ordinance was introduced on October 5, 2021 and is scheduled for consideration by the Board of Supervisors for adoption on October 26, 2021.

DISCUSSION:

Current Cultivation Figures and Tax Revenue

For FY 2021-22, the Program reported to the BoS Cannabis Committee, our commercial cannabis industry would cultivate 3,351,430 square feet (“sq. ft.”) of mixed light, 100,469 sq. ft. of indoor, and 1,527,714 sq. ft. of nursery for an estimated projection of \$19,088,622 in cultivation tax revenue for this fiscal year.

Implications of Permitting Additional Modifications

Historically, the Program has processed 22 modifications in Fiscal Year (“FY”) 2019-20 to commercial cannabis square footage. Of the 22 requested modifications, 5 were to decrease and 17 to increase. In FY 2020-21, 31 modifications were approved; 24 to increase and 7 to decrease.

The process to analyze and approve a modification requires review and updates to several systems among the Cannabis Program team. It should not be considered a minimal set of work tasks. To that end, the BoS approved a Cannabis Program Modification fee of \$1,070 in May 2021. A cultivation square footage modification requires the following internal process steps:

- The permittee submits a modification request.
- The Program responds with a standard letter acknowledging the request and allowing sixty (60) days to review compliance with the Good Standing Criteria.
- The licensee does not need to submit a “Science Amendment” to the Department of Cannabis Control (“DCC”) for a temporary modification to reduce cultivation square footage; however, the licensee cannot use the premise as originally approved for any other purpose during this temporary change.
 - If a “Science Amendment” is required, it is important to note that the Program has received input

- from DCC regarding delays in processing applications including amendments.
- Once approved, the licensee forwards the amended site diagrams to the Program.
- The Program requests TTC to review the modification request.
- If TTC has no objections, the following will occur:
 - The Program conducts a site inspection to measure cultivation square footage.
 - If the site inspection meets the requested modification, the Program reviews with County departments to confer.
- If approved, the Program issues the permittee the Program Modification Fee invoice.
- TTC updates their system and records to calculate the modified tax invoice amount.
- Once paid, the Program issues the letter approving the modification with an effective date.
 - Department systems and tracking reports must be timely updated with the modifications to ensure correct commercial cannabis tax invoices and the Program's ability to track cultivation square footages by permittee. These work tasks involve multiple levels of staff within cannabis departments.
 - If a permittee has been approved for a CNB, a modified CNB permit needs to be issued and posted at the permittee's site.

Budgetary impacts of reduced cultivation tax revenue

If the proposed amendment to Monterey County Code Chapter 7.90 is adopted by the BoS, staff estimates a decline in commercial cultivation tax revenue. Several industry operators have stated they will decrease the square footage in the winter months and hopefully increase in the spring. The Program contacted Monterey County Cannabis Industry Association to identify a projected decrease in commercial cannabis square footage, however, they did not believe it would be possible to gather information at the time of this writing. The outlook for wholesale cannabis pricing is unclear, as is how local operators will respond to these conditions. As such, the Program is unable to determine if this is a seasonal decline or a permanent market correction and cannot provide a projection with a reasonable level of certainty.

Cannabis Compliance Inspections

The Cannabis Compliance Inspection process continues to be improved over time. In response to industry comments, compliance inspections are scheduled quarterly unless a site inspection is required as a follow-up to a variety of work tasks. The following are work task examples: Metrc compliance, approved modifications, approval of a CNB, stop work orders, stipulated agreements, and code enforcement cases. With an additional modification to square footage, there will likely be an increase in compliance inspections. Additional site visits will be needed to approve the (decrease/increase) modification, ensure the greenhouse or structure is approved, and periodically measure the square footage to ensure the permittee stays within the approved amount. It is important to note, if a permittee decreases cannabis cultivation square footage, the licensee retains active state cultivation licenses that likely exceed the reduced square footage amount. State licenses are issued on an annual basis.

Considerations to the impact of Commercial Cannabis Tax Revenue for Fiscal Year 2021-22

Staff reached out to the Monterey County Cannabis Industry Association ("MCCIA") in late August inquiring the number of operators that would seek a modification in the fall of 2021 to decrease square footage if the proposed amendment was approved. The response was that it would be difficult to know with certainty. Although permittees who participate in the Coastal Grower's Association ("CGA") industry meetings have stated, if they were allowed two modifications, they would submit a request to do so, staff does not have an estimated number to report at the time of this writing. In the past, electronic surveys have not proved to be successful in seeking this type of information.

Ordinance to Amend Chapter 7.90

The draft ordinance increases the number of times a cultivator may modify their canopy registration, in addition to clerical changes to reflect administration of the Chapter by the Cannabis Program. A redlined and clean version of the ordinance are attached to this report. (Attachments).

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel was involved in the preparation of the ordinance and report. The Office of the County Counsel approved the ordinance as to form.

FINANCING:

It is uncertain how revenue may be affected in current and subsequent fiscal years. The Program reports performance indicators to the BoS Cannabis Committee monthly and collected commercial cannabis tax revenue quarterly.

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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Approved by: Nicholas E. Chiulos, Assistant CAO

Attachments:

Draft ordinance (redline version)

Draft ordinance (signed clean version)