

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



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MEMORANDUM

Date: February 27, 2017

To: Land Use and Development Review Staff

From: Carl P. Holm, AICP, RMA-Director

Subject: Status of Commercial Medical Cannabis Operations and Permitting in Monterey County

cc: Board of Supervisors
Planning Commission
Department Heads

Many comments and questions have been received from the public about the current status of medical cannabis activities and permitting in Monterey County. General references and observations have been made regarding the existence of more activity occurring than has been granted via exemptions from the interim ordinance. To address these questions and to aid in establishing fair and balanced business practices; this memorandum provides information regarding current medical cannabis regulations and how the County will implement these regulations during this transitional period.

Interim Ordinance - Exemptions:

On July 7, 2015, the Board of Supervisors adopted an Interim Urgency Ordinance that temporarily prohibited new collective and cooperative cannabis activities in Monterey County while the County developed permanent regulations for such operations (Ordinance No. 5254). The Interim Ordinance was extended and amended (Ordinance Nos. 5256 and 5265), to remain in effect through February 26, 2017 or until permanent regulations were adopted, whichever occurred first. In addition, certain exemptions were established that allowed collectives and cooperatives to continue operating during the effective period of the Interim Ordinance, if they submitted evidence to demonstrate to the satisfaction of the Director of Planning that the medical cannabis operation met the established exemption criteria.

Out of fourteen applications, six operations were provided a letter from the Director of Planning indicating that they were not prohibited from continuing their operations pursuant to the Interim Ordinance. The others were denied or a decision was not rendered due to changes in the regulations discussed below. The six operations were required to submit an application for a permit within 30 days of any new regulations becoming effective.

Permanent Regulations - Operative Date:

On July 9 and 12, 2016, the Board of Supervisors adopted ordinances establishing regulations for all commercial medical cannabis activities in the inland areas of Monterey County, and a resolution of intent to adopt ordinances establishing regulations in the coastal areas of Monterey County. The inland regulations became effective (but not operative) on August 12, 2016.

The operative date of the ordinances was contingent upon passage of a cannabis business tax ballot measure, Measure Y, which was approved by the voters in November 2016. With the passage of Measure Y, the inland regulations became operative on December 7, 2016 and as of that date, the Interim Ordinance was no longer effective in the Inland Zone.

Detailed information about the new regulations, permitting requirements and process, frequently asked questions, application forms, and application fees have been added to the RMA-Planning website at:

<http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/faq-s/cannabis-permitting-information>

Staff with the County and Coastal Commission met/talked on multiple occasions but we have not been able to reach consensus on language for an ordinance allowing medical cannabis operations within the Coastal Zone in Monterey County. To maintain maximum flexibility to seek resolution of potential policy conflicts between the County's current Local Coastal Program (LCP) and Commission staff's recommended modifications, the County has decided to withdraw the LCP Amendment application from Coastal Commission consideration at this time. We want to continue discussions and negotiation of issues relative to medical cannabis in Monterey County, so that we can develop mutually agreeable policies and regulations for this use in the Coastal Zone. The Interim Ordinance expires on February 26, 2017, even if the permanent coastal regulations are not operative at that time.

Those seeking general information concerning permanent coastal regulations are encouraged to contact RMA-Planning at (831) 755-5025. Those seeking information with regard to taxes are encouraged to contact the Treasure/Tax-Collector's Office at (831) 755-5017.

Legally Established Greenhouse or Warehouse:

Commercial medical cannabis cultivation is required to be located within a greenhouse, warehouse or industrial building that was legally established prior to January 1, 2016, and located only in the Farmland or Industrial zoning districts. Determining whether a facility was legally established prior to January 1, 2016 is dependent on fact-specific permit and construction records in each case. Applicants should research permits for the property where they are located. If permits are not found, but there is clear evidence that structures existed prior to the cut off date, applicants should meet with RMA to review the evidence.

Applicants may decide to demolish existing greenhouses or warehouse buildings in advance of obtaining a use permit and a business permit for medical cannabis cultivation. In this case, RMA-Planning should be contacted to prepare a letter that establishes how much floor area legally existed prior to January 1, 2016. This research will require the applicant to pay any applicable research fees. If structures are demolished with recognition from the RMA regarding the previously established floor area, then they can be replaced elsewhere on the site, provided they do not exceed the recognized floor area and do not impact productive farmland. Replacement is not limited to the previous footprint or configuration, it is only limited to the previously recognized square footage. The intent is to get the best design where the floor area does not exceed pre-existing conditions.

Applications:

The inland regulations became effective on August 12, 2016, and became operative on December 7, 2016 when the commercial cannabis business tax was certified by the County. As of December 7, 2016, the County has been accepting applications for medical cannabis-related permits in the Inland Zones. All commercial medical cannabis operations in Monterey County are required to obtain use permits, cannabis business permits, and business licenses.

As of the date of this memorandum, there are 17 Land Use Permit applications for medical cannabis activities being processed. None have been approved or granted as of the date of this memorandum. Applications for medical cannabis activities in the Coastal Zones are not currently being accepted as the coastal regulations are still in process with the Coastal Commission.

As of August 12, 2016, Section 21.67.030.G of the Monterey County Code states: “*Commercial medical cannabis activities that were legally established prior to the effective date of Ordinance No. [5270] enacting this Chapter shall have one (1) year from the effective date of the Ordinance to obtain all required County permits, licenses, and entitlements, or to terminate their operations.*” This means legal collectives or cooperatives legally established before August 12, 2016, must have County permits by August 12, 2017, or terminate operations.

During this transition period, collectives and cooperatives are not prohibited from operating provided those operations do not violate any other County regulation or state law. This interpretation should also not be considered permission from the County to operate a medical cannabis business without a permit. Rather it is a recognition that we are in transition period from previous regulations.

In the Coastal Zone, following expiration of the Interim Ordinance, and until the Coastal Zone Ordinance is adopted by the Board of Supervisors, the County will require a Coastal Development Permit for commercial cannabis activities. The procedures and requirements regarding registration of existing commercial cannabis activities still apply. An application for Development Review Committee to obtain a use permit will be required within three months of the effective date of the Coastal regulations.

Process:

To clarify the process for businesses currently operating prior to obtaining permits:

- 1. All persons and entities conducting commercial medical cannabis activities in Monterey County, who are eligible to obtain permits, must obtain those permits by the August 12, 2017 cutoff, or terminate operations.**
- 2. The first step in obtaining medical cannabis permits is to process a land use application through the RMA Development Review Committee.**
- 3. The RMA is requesting anyone interested in obtaining medical cannabis permits to submit a Development Review Committee request form by March 31, 2017. This includes information about the type, nature, location, and size of the cannabis operation.**
- 4. Eligible applicants who submit a Development Review Committee request form by March 31, 2017 and continue to diligently pursue permits in order to meet the August 12, 2017 cutoff date may be considered for an extension of their current use if County processing times take longer than expected.**
- 5. Eligible applicants who have not submitted a Development Review Committee request form by March 31, 2017 will not be eligible for an extension and will be required to terminate their operations on August 12, 2017 if they have not obtained the required County permits by that time.**
- 6. All persons and entities who are currently conducting commercial medical cannabis activities in Monterey County, and have made an application for the Development Review Committee, (not violating any other County regulation or state law), are not prohibited from operating during this interim period between now and August 12, 2017. However, they do so without guarantee that permits will be granted and without financially backed expectations.**

Continuing Efforts

Regulation and permitting of cannabis activities is a new endeavor for everyone in the County. We continue to try to improve our permitting process, so new interpretations and updates may be necessary. We are committed to keeping everyone informed as we move forward. Medical cannabis regulation amendments for outdoor cultivation are being discussed and regulations for recreational (adult-use) cannabis activities are on the horizon. Meanwhile, outdoor cultivation over 100 square feet is not permitted and recreational uses are not allowed.

Carl P. Holm, ACIP
RMA Director