

ORDINANCE NO. 5376

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AUTHORIZING THE ISSUANCE OF TEMPORARY COMMERCIAL CANNABIS
PROVISIONAL PERMITS**

County Counsel Summary

This ordinance will assist Monterey County based cannabis businesses that are making good faith efforts to complete requirements to obtain their County permits but are running into time constraints, including the state's decision to phase out its provisional licenses starting, for some, in 2023. The ordinance will result in the issuance of Provisional Permits to current cannabis operators that have not yet completed all requirements to obtain their commercial cannabis permit for a one-year initial term. During the initial term, operators must complete high priority permitting requirements such as public water system requirements, permanent restrooms, certain compliance conditions, and fire suppression requirements. If such requirements are met by the end of the one-year initial term, a Provisional Permit shall be renewed until no later than January 1, 2024 for operators cultivating more than 22,000 square feet of total canopy and January 1, 2026 for all other operators. These dates are similar to the restrictions on state provisional licensees. Further, Provisional Permittees shall still be subject to code compliance inspections, fines, and/or administrative penalties, where appropriate. Similarly, a Provisional Permit will not render Provisional Permittees immune to investigatory and law enforcement investigations or prosecutions by state and/or federal governmental bodies, as appropriate.

WHEREAS, Monterey County has allowed commercial cannabis applicants to operate provisionally pending completion of necessary discretionary land use permits and commercial cannabis permits since 2017, provided the applicants met and continue to meet the existing good standing criteria; and

WHEREAS, a significant number of applicants are currently operating but have yet to complete the requirements necessary to obtain or vest a discretionary land use permit and a commercial cannabis permit, leading to a significant backlog in pending permit applications; and

WHEREAS, the state agency responsible for cannabis regulation, the Department of Cannabis Control (DCC), relies upon the County for local authorization as part of its provisional and annual licensing program; and

WHEREAS, the DCC has issued regulations limiting the life of the state provisional licenses to as early as January 1, 2024 for some operators and no later than January 1, 2026 for all operators; and

WHEREAS, the County is committed to assisting applicants in completing all outstanding

County permitting requirements; and

WHEREAS, a temporary County provisional permitting system and a firm deadline to complete outstanding County permit requirements is necessary to motivate applicants, clear the existing backlog, and provide applicants with the opportunity to obtain the County permits required to receive their state licenses; and

WHEREAS, the temporary provisional permitting system created by this Ordinance is not a California Environmental Quality Act (CEQA) project within the meaning of Public Resources Code section 21080. First, the provisional permitting system will be administered ministerially; the decision whether to issue and/or renew a provisional permit will be based solely on objective criteria, and not subject to discretion. Second, the provisional permitting system will not result in a direct or reasonably foreseeable indirect change to the physical environment because it applies only to applicants already operating; and

WHEREAS, all applicants must complete project-level CEQA review before receiving County discretionary land use permits and commercial cannabis permits.

NOW, THEREFORE, the Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Definitions.

The following words and phrases shall have the meanings set forth below when used in this Ordinance. The definitions in Monterey County Code Chapter 7.90 otherwise apply.

- A. "Applicant" means a commercial cannabis operator that has already applied for a commercial cannabis permit under Monterey County Code Chapter 7.90 and is currently operating with County approval.
- B. "Class A Provisional Cannabis Permit" means the Provisional Permit granted to larger operators cultivating indoor and mixed-light sites greater than 22,000 square feet of total canopy, and eligible to apply for Type 5, 5A, or 5B state cultivation licenses.
- C. "Class B Provisional Cannabis Permit" means the Provisional Permit granted to all other operators, including, but not limited to, operators cultivating indoor and mixed-light sites less than 22,000 square feet of total canopy, retail operations, testing laboratories, distributors, processors, and manufacturers.
- D. "High Priority Items" means:
 - 1. Establishment of a permitted public water system pursuant to Monterey County Code Chapter 15.04 and California Health & Safety Code section 116525 *et seq.*;
 - 2. Installation of permanent restroom facilities pursuant to Monterey County Code Chapter 15.20 and 8 Code of California Regulations sections 3364, 3457);

3. Receipt of all health permits required by Monterey County Code Chapter 10.04 and California Health & Safety Code section 25500 *et seq.*);
 4. Satisfaction of all fire suppression and fire alarm requirements per Monterey County Code section 18.09.030(U)); and
 5. Receipt of the applicable land use entitlement per Monterey County Code Titles 20 and 21, and satisfaction of the permit approval notice, indemnification agreement, and condition compliance fee conditions of approval to that entitlement.
- E. “Provisional Permittee” means a person issued a Provisional Permit under this Ordinance.
- F. “Provisional Permit” means a Class A or Class B Provisional Cannabis Permit issued to an Applicant under the terms of this Ordinance.

SECTION 2. Purpose.

The purpose of this Ordinance is to establish a Provisional Permit system to temporarily allow Applicants to continue commercial cannabis operations while they pursue their state and County licenses and permits, and to incentivize Applicants to complete outstanding requirements by a date certain.

SECTION 3. Expiration and Applicability.

This Ordinance shall apply from its effective date through January 1, 2026, at which point it will expire by its own terms. This Ordinance applies in the unincorporated area of the County of Monterey.

SECTION 4. Eligibility.

- A. All Applicants currently engaged in a commercial cannabis operation and that are in good standing under the County’s required criteria as of the effective date of this Ordinance shall be issued a Provisional Permit from the Appropriate Authority at no cost once this Ordinance is effective.
- B. Obtaining a Provisional Permit is not a guarantee of approval of the permits and licenses for ongoing commercial cannabis operation required pursuant to the Monterey County Code.

SECTION 5. Provisional Permit Terms.

- A. The County shall issue Provisional Permits to all eligible Applicants and the Provisional Permits shall be valid for one year from their issuance. As soon as practicable after the Provisional Permits are issued, the Appropriate Authority will identify in writing all outstanding requirements for each Applicant, categorize them by priority, and delineate the High Priority Items. By the end of the one-year initial term, each Applicant shall

complete all High Priority Items.

- B. If an Applicant has not completed all High Priority Item requirements by the end of the initial one-year term, the Appropriate Authority shall not renew the Provisional Permit. The Applicant shall immediately cease all operations and work with the Appropriate Authority to complete the shutdown processes.
- C. If an Applicant has completed the High Priority Item requirements by the end of the initial one-year term, the Appropriate Authority shall renew the Provisional Permit.
 - 1. Class A Provisional Cannabis Permittees that satisfy High Priority Item requirements shall have their Provisional Permit renewed until January 1, 2024, at which point the Provisional Permit shall expire. If the Applicant obtains a commercial cannabis permit under Monterey County Code Chapter 7.90 prior the January 1, 2024, such permit shall immediately supersede the Applicant's Provisional Permit.
 - 2. Class B Provisional Cannabis Permittees that satisfy High Priority Item requirements shall have their Provisional Permit renewed until January 1, 2026, at which point the Provisional Permit shall expire. If the Applicant obtains a commercial cannabis permit under Monterey County Code Chapter 7.90 prior to January 1, 2026, such permit shall immediately supersede the Applicant's Provisional Permit.

SECTION 6. Application of Monterey County Code.

The terms and requirements of the Monterey County Code are incorporated by reference. All Applicants are constrained by the Monterey County Code, and subject to the requirements therein irrespective of their Provisional Permit status.

SECTION 7. Enforcement.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Ordinance. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Ordinance shall be guilty of a misdemeanor. No proof of knowledge, intent, or other mental state is required to establish a violation.

B. Any condition caused or allowed to exist in violation of any of the provisions of this Ordinance shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapters 1.20 and 1.22 of the Monterey County Code, and any other action authorized by law.

C. Each violation of this Ordinance shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Monterey County Code or

otherwise authorized by law. Additionally, any violation of this Ordinance shall constitute a public nuisance shall be subject to injunctive relief, disgorgement of any payment to the County of all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, restitution, and any other relief or remedy available at law or in equity. The County, including the Office of the District Attorney and the Office of the County Counsel, may also pursue all remedies and actions available and applicable under state and local laws for any violations committed by the commercial cannabis operator or persons related thereto, or associated with, the commercial cannabis activity.

D. For purposes of administration and enforcement of this Ordinance generally, the Appropriate Authority may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this Ordinance as it deems necessary to implement or clarify such provisions and/or aid in enforcement.

SECTION 8. 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 whether any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 9. Effective date.

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

PASSED AND ADOPTED this 1st day of June, 2022, by the following vote:

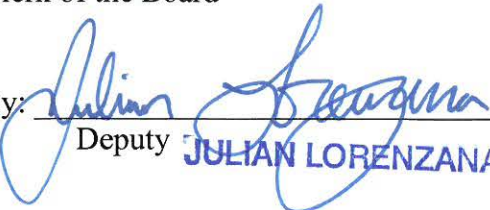
AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None




Mary Adams, Chair,
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: 
Deputy **JULIAN LORENZANA**

APPROVED AS TO FORM:

KELLY L. DONLON
Assistant County Counsel