



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 16-883

July 19, 2016

Introduced: 7/8/2016

Version: 1

Current Status: Agenda Ready

Matter Type: General Agenda Item

REF150048 (Chapter 7.90 and 7.95) and REF160043 (Chapter 7.100 - Tax)

Public hearing to consider:

- a. Adoption of an ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis permit for commercial medical cannabis activities;
- b. Adoption of an ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- c. Adoption of an ordinance adding 7.100 to impose a County general tax on commercial cannabis businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- d. Adoption of a resolution calling an election for the voters in the unincorporated area of the County to consider adoption of an ordinance imposing a tax on commercial cannabis (marijuana) businesses, and consolidating that election with the statewide general election to be held on November 8, 2016; and
- e. Authorizing the members of the Board of Supervisors ad hoc committee on medical marijuana to sign the argument in favor of the tax measure and any associated rebuttal argument on behalf of the Board of Supervisors.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Staff and the Board of Supervisors ad hoc committee on medical marijuana recommends that the Board of Supervisors:

- a. Adopt an ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis permit for commercial medical cannabis activities;
- b. Adopt an ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- c. Adopt an ordinance adding 7.100 to impose a County general tax on commercial cannabis businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- d. Adopt a resolution calling an election for the voters in the unincorporated area of the County to consider adoption of an ordinance imposing a tax on commercial cannabis (marijuana) businesses, and consolidating that election with the statewide general election to be held on November 8, 2016; and
- e. Authorize the members of the Board of Supervisors ad hoc committee on

medical marijuana to sign the argument in favor of the tax measure and any associated rebuttal argument on behalf of the Board of Supervisors.

SUMMARY:

On July 12, 2016, the Board of Supervisors adopted a Negative Declaration as well as zoning regulations for coastal and non-coastal areas regarding commercial medical cannabis business in the unincorporated areas of Monterey County. Non-zoning regulations, including Chapters 7.90 (Attachment A), 7.95 (Attachment B), and 7.100 (Attachment C) were introduced on July 12, 2016 and set for consideration of adoption on July 19, 2016. The action now before the Board includes consideration of ordinances adding Chapters 7.90, 7.95, and 7.100 establishing annual permit requirements for persons and businesses conducting cannabis (marijuana) activities and establishing a tax on all commercial cannabis businesses, medical and non-medical. Together these ordinances create regulatory and tax requirements for cannabis activities in the unincorporated areas of the County. The following is a summary of the regulations and ordinances:

Land Use and Zoning - Adopted July 12, 2016. Requires a Use Permit (Title 21 - Inland zoning or Coastal Development Permit (Title 20 - Coastal zoning) issued to allow certain medical commercial cannabis activities to occur on specific property (non-transferable). Consideration of Use Permits or Coastal Development Permits will assess potential environmental impacts, neighborhood character, services and facilities, and the general suitability of the site to support cannabis operations. These permits run with the land.

Business Permit/Tax - Considered on July 12, 2016. Three ordinances were introduced, reading was waived, and a hearing was set for July 19, 2016 to consider adoption:

Chapter 7.90 - Commercial Medical Cannabis Permits (Attachment A)

Chapter 7.95 - Personal Medical Cannabis Permits (Attachment B)

Chapter 7.100 - Tax on all commercial cannabis operations (Attachment C)

These permits run with the businesses/individuals and cannot be transferred.

Chapter 7.90 - Requires individual businesses to obtain an annual medical cannabis business permit to operate a cannabis business in the County. Commercial medical cannabis permits will only be issued to businesses proposing operations on a site permitted pursuant to a Use Permit or Coastal Development Permit and who meet the minimum qualifications outlined in the ordinances including background checks, security requirements, and have adequate operational plans. Associated with this business permit will be regular health, safety, and compliance inspections of ongoing business operations. This Business Permit follows more closely the State licensing scheme established within the Medical Marijuana Regulation and Safety Act.

Chapter 7.95 - Requires annual personal medical cannabis permits to cultivate up to 100 square feet of canopy area for a qualified patient in the unincorporated area. Personal cultivation means a patient, with a doctor's recommendation, or their

designated caregiver, growing cannabis for the qualified patients' consumption only. Cannabis would not be for sale or distribution under this scenario. Personal medical cannabis permits will be issued to qualified patients or primary caregivers who meet the criteria contained in the Chapter including minimum setbacks for outdoor cultivation, fencing or lockable entrance to the plants are provided, and associated materials will be properly stored.

Chapter 7.100 - Imposes a general business tax on all commercial cannabis operations in the unincorporated area, medical and non-medical. Pursuant to State law, the marijuana business tax would not take effect unless approved by a simple majority of the voters (required for adoption of a general tax). In addition, the tax on non-medical cultivation will only take effect if the adult use initiative, also on the November 2016 ballot, is adopted. The tax is recommended as a means to address projected costs and demands on County services that cannot be recovered through permit application fees (e.g. enforcement). Revenues may also be used for general County services including such things as law enforcement, road improvements, hospitals, libraries, parks, housing programs, and permitting and inspection services. Implementation of the new medical cannabis regulations will necessitate new staffing levels and services that will have a negative fiscal impact on the County's General fund without the taxes in place. Therefore, both the Land Use and Business Permit ordinances have been drafted so that they do not become operative until and unless the tax is passed by the voters.

Recommended tax rates include:

- Cultivation excluding nurseries: an annual tax of \$15 to \$25 per square foot of permitted canopy area.
- Nurseries: an annual tax of \$2 to \$5 per square foot of permitted canopy area.
- All other commercial cannabis business activities: an annual tax of 5% to 10% of gross receipts.

All taxes will begin at the minimum rate, and after a three year period, will automatically increase on an annual basis until the maximum rate is reached. Once the maximum rate is reached, the tax on cultivation and on nurseries, will be adjusted annually based on the consumer price index (CPI) score for the San Francisco-Oakland-San Jose area. A table illustrating the tax rate by year is attached in Exhibit D.

Cities of Salinas, Gonzales, and King City are also contemplating taxing cannabis cultivation activities (see Exhibit D comparing County to City tax proposals). These rates also take into account the potential for taxes at the State level.

Staff and the ad hoc committee have developed language for the November ballot that poses the question to the voters:

Shall the ordinance imposing a tax on commercial marijuana businesses in the unincorporated area of Monterey County up to a maximum of: \$25 per square foot on cultivation with an annual adjustment by Consumer Price Index (CPI) thereafter; \$5 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other marijuana business activities with no CPI, potentially

generating millions of dollars annually to help fund County services, be adopted? If the Board adopts the resolution (Exhibit E), calling the election additional elections deadlines for arguments in favor of a tax and rebuttals to arguments against the tax will be due during Board recess dates in August. For this reason, staff recommends authorizing the members of the ad hoc committee to sign these arguments on behalf of the Board of Supervisors.

DISCUSSION:

All of the ordinances contain wording regarding the “Effective Date” and “Operative Date” of the particular ordinance which tie the operative date of regulations to adoption of the tax ordinance (Chapter 7.100) and subsequent approval by the voters of Monterey County. None of the ordinances will become operative until or unless a tax measure is passed by the voters. This relationship is suggested to protect existing County services from budgetary impacts that would result from adoption and implementation of cannabis regulations without additional revenues to offset those impacts.

To adopt the tax, the following steps are needed:

- 1) Adoption of the tax ordinance which includes the type of tax, rate of tax, and method of collection. This information is contained in Chapter 7.100 (Exhibit C).
- 2) Adoption of a resolution by at least 2/3rds vote of the Board of Supervisors, which means at least 4/5ths vote with all five supervisors voting, to present the tax to the voters. The resolution attached as Exhibit E, contains the proposed “ballot question” language.
- 3) For a general tax, approval by a majority of the voters at the election. The resolution attached as Exhibit E would call the election and consolidate it with the statewide general election to be held on November 8, 2016 when the tax would be considered by the voters.

The “ballot question,” is limited to 75 words and must contain certain basic information to pass legal standards. The ad hoc committee has reviewed the “ballot question” and recommends the language set forth above and attached in Exhibit E. In addition, if the County requests, the text of the tax ordinance (Chapter 7.100) can be printed in the Voter Guide.

If the ordinances and resolution before the Board are adopted, and the tax measure is passed by voters, this would represent the first phase of medical cannabis permitting in the unincorporated area of Monterey County. As mentioned on July 12, 2016, the ad hoc committee recommends exploring the issues and options relative to outdoor cultivation and cannabis operations in additional zonings following this first phase. This would require a new and focused effort. Additionally, updated fee articles will need to be brought forward in the near future to establish the new application fees for the cannabis-related permit requirements. Staff is planning to bring the fee schedules forward in September.

An initial study analyzing the environmental effects of the draft regulations was prepared and circulated for public comment from May 20, 2016 through June 21,

2016. The Initial study found that as drafted, approval of the ordinance would have a less than significant impact on the environment and a Negative Declaration was prepared. The Negative Declaration was adopted by the Board on July 12, 2016. Chapters 7.90, 7.95, and 7.100 were contemplated in that Negative Declaration.

OTHER AGENCY INVOLVEMENT:

The following agencies and departments have been involved in preparation of the draft ordinances:

- Resource Management Agency
- CAO's Office
- Health Department/Environmental Health Bureau
- Economic Development Department
- Sheriff's Office
- Treasure/Tax Collector
- Agricultural Commissioner's Office
- District Attorney's Office
- County Counsel's Office

FINANCING:

Funding for staff time associated with drafting these regulations is included in each Departments FY15-16 and FY 16-17 adopted Budgets. On May 5, 2016 the County entered into an agreement with Hinderliter, de Llamas & Associates (HdL) in the amount of \$64,000 to provide their subject matter expertise and technical support in developing medical marijuana regulations, associated fees, and a potential tax ballot measure. This agreement was funded out of the Economic Development Department Fund 001-1070-8221-DOE001.

Adoption and implementation of these regulations is anticipated to impact services. Based on information received from the various departments that would be involved, staffing costs for a successful implementation of this program (permit processing, enforcement, etc) has been estimated to be about \$3.5 million per year. Estimated revenue from permit fees, using the current fee schedule, is about \$650,000 per year. A total needs assessment for development of permit fees is underway. That final outcome depends on the scope of the final regulations that are adopted. Once the needs have been identified, staff will return to the Board with fee articles that address permit fees to implement the ordinance.

Some enforcement costs can be recovered through citations or litigation. However, that is typically only a fraction of the actual cost to perform all of the enforcement duties. The ad hoc committee requested staff to pursue a tax measure that could provide funding necessary to implement such a program. The ad hoc committee recommends that implementation of the ordinance be tied to successful passage and implementation of a tax measure on the November 2016 ballot to assure that the County is not impacted by this action. As written, the tax measure is estimated to bring in at least \$30 million per year.

Staff will return to the Board of Supervisors with any staffing costs that were not part of the FY 16-17 adopted department Budgets.

Prepared by: Jacqueline R. Onciano, Planning Services Manager, ext. 5193
Approved by: Carl P. Holm, RMA Director, ext. 5103

Attachments:

- Attachment A Ordinance adding Chapter 7.90-Annual Commercial Medical Cannabis Permit
- Attachment B Ordinance adding Chapter 7.95- Annual Personal Medical Cannabis Permit for Personal Cultivation/Use
- Attachment C Ordinance adding Chapter 7.100- Impose general tax on commercial cannabis business for unincorporated County of Monterey
- Attachment D Tax rate information by year and tax rate comparisons by jurisdiction
- Attachment E Draft resolution calling for the election on the tax measure and consolidating it with the November 2016 general election

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Pharmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Steve Craig; Erin McKenna; Cheryl Bryant Bruce; Charles Rowley; Planning File REF150048

Attachment A

This page intentionally left blank.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 7.90 TO THE MONTEREY COUNTY CODE RELATING TO COMMERCIAL MEDICAL CANNABIS ACTIVITIES

County Counsel Summary

This ordinance adds Chapters 7.90 to the Monterey County Code to regulate the operation of commercial medical cannabis activities in a manner that is consistent with state law. This ordinance requires commercial medical cannabis operations to obtain an annual permit to conduct commercial medical cannabis activities, including cultivation, dispensaries, manufacturing, testing, transportation, and distribution. This permit would be required in addition to any required land use entitlements. The commercial medical cannabis permit would cover only the permittee identified on the permit with respect to the premises identified on the permit and would not run with the land, and it would require the permittee to meet specified operating requirements including requirements relating to safety, security, waste disposal, storage of pesticides, and packaging and labeling. Cultivation of medical cannabis of one hundred square feet total canopy area or less by a qualified patient exclusively for personal use and by a primary caregiver exclusively for the personal use of up to five specified qualified patients is exempt from this ordinance. The ordinance also contains provisions for enforcement.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 7.90 is added to the Monterey County Code to read as follows:

Chapter 7.90 COMMERCIAL MEDICAL CANNABIS PERMITS

Sections:

- 7.90.010 Findings and purpose.**
- 7.90.020 Applicability.**
- 7.90.030 Definitions.**
- 7.90.040 Commercial medical cannabis permit required.**
- 7.90.050 Commercial medical cannabis permit application process.**
- 7.90.060 Review of application for commercial medical cannabis permit.**
- 7.90.070 Commercial medical cannabis permit renewal process and grounds for denial.**
- 7.90.080 Fees.**
- 7.90.090 Commercial medical cannabis permit nontransferable.**
- 7.90.100 Commercial medical cannabis operating requirements.**
- 7.90.110 Cultivation, manufacture, waste, and storage requirements.**
- 7.90.120 Packaging and labeling requirements.**
- 7.90.130 Suspension or revocation of commercial medical cannabis permit.**
- 7.90.140 Procedure for suspension or revocation.**
- 7.90.150 Service requirements.**

7.90.160 Enforcement and penalties.

7.90.170 Operative date.

7.90.180 Severability

7.90.010 Findings and purpose.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. The federal Controlled Substances Act (21 U.S.C. §§ 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

C. The federal government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement strong and effective regulatory and enforcement systems that will address the threat that medical cannabis activity could pose to public safety, public health, and other law enforcement interests.

D. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing cannabis.

E. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, “CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.

F. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

G. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*; the “MMRSA”). The MMRSA creates a state licensing program for commercial medical cannabis activities. The MMRSA allows counties and cities to maintain local regulatory authority over medical cannabis. The state will not issue a state license without first receiving authorization by the applicable local jurisdiction.

H. It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety, while protecting the health, safety, and general

welfare of the residents and businesses within the unincorporated areas of Monterey County and comply with state law and federal guidelines.

I. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to medical cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.

J. This draft ordinance provides regulations for the local permitting of medical marijuana operations under specified conditions in the unincorporated areas of the County.

K. To address the added financial burden to the County that may result from this ordinance, including costs associated with processing applications under this ordinance as well as additional law enforcement and other costs, this ordinance requires voter passage of a County tax on commercial medical cannabis activities prior to this ordinance becoming operative.

L. This ordinance, together with the ordinances adding Chapters 20.67 and 21.67 to the Monterey County Code requiring a necessary land use entitlements for all medical cannabis operations, are intended to establish criteria for issuing local permits pursuant to the MMRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

7.90.020 Applicability.

This Chapter applies in the unincorporated area of the County of Monterey.

7.90.030 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter. The definitions in Chapter 20.06 for the coastal zone and Chapter 21.06 for the non-coastal zone shall otherwise apply.

A. “Applicant” means a person eighteen (18) years of age or older who has submitted an application for a permit or renewal of a permit issued pursuant to this Chapter. If the applicant is an entity and not a natural person, applicant shall include all persons having a ten percent (10%) or more financial interest in the entity.

B. “Application” means that form provided by the Appropriate Authority in accordance with this Chapter for the purpose of seeking a commercial medical cannabis permit.

C. “Appropriate Authority” means the Director of Planning or his or her designee.

D. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also

means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

E. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

F. “Commercial medical cannabis activity” means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product. “Commercial medical cannabis activity” does not include a qualified patient who cultivates one hundred (100) square feet total canopy area or less exclusively for his or her personal use or who possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. “Commercial medical cannabis activity” also does not include a primary caregiver who cultivates one hundred (100) square feet total canopy area or less exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver or who possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

G. “Commercial medical cannabis permit” means a permit issued by the County to an applicant to perform commercial medical cannabis activities under this Chapter.

H. “Commercial medical cannabis operation” means an entity that engages in commercial cannabis activities.

I. “County” means the County of Monterey.

J. “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from dispensary, up to an amount determined by state law, or any of its departments or divisions, to a qualified patient or primary caregiver, or a testing laboratory.

K. “Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the California Government Code;

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or

3. An independent contractor assigned by an organization or entity which provides hearing officers.

L. "Identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

M. "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

N. "Permittee" means a person issued a County permit under this Chapter.

O. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

P. "Premises" means the building or greenhouse in which commercial medical cannabis activities are operated and, in addition, any accessory structures and appurtenant areas.

Q. "Primary caregiver" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

R. "Property owner" means the individual or entity who is the record owner of the subject property where commercial medical cannabis activities is located or is proposed to be located.

S. "Qualified patient" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

T. "State" means the state of California.

U. "State license" means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.*

7.90.040 Commercial medical cannabis permit required.

A. Any person who intends to engage in a commercial medical cannabis activity shall obtain a commercial medical cannabis permit for the fixed location in which the commercial medical cannabis activity is to occur.

B. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in a commercial medical cannabis activity in the unincorporated portion of Monterey County, unless the County has issued such person a permit under this Chapter and the permit is in effect. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

C. The fact that an applicant possesses other types of state or County permits or licenses, shall not exempt the applicant from obtaining a commercial medical cannabis permit under this Chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this Chapter, except that the commercial medical cannabis permit must be consistent with the land use entitlement issued by the County pursuant to Title 20 or Title 21 of the Monterey County Code.

D. The applicant must receive all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code before the County will issue a commercial medical cannabis permit under this Chapter.

E. The following persons are exempt from the requirements of this Chapter:

1. A qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person; and

2. A primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

7.90.050 Commercial medical cannabis permit application process.

A. Each application for the establishment of a commercial medical cannabis permit shall be filed with the Resource Management Agency/Planning on the form and in the manner prescribed by the Director of Planning. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

B. In all cases, the application shall contain, without limitation, the following documentation:

1. All applicants' names, mailing addresses, and if available, e-mail addresses.

2. A 24-hour or nighttime contact phone number.

3. The physical address and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed commercial medical cannabis operation will be located.

4. Proof of ownership of premises, or if the premises on which the commercial medical cannabis operation is to occur is rented or leased, written permission from the property owner containing the property owner(s)' notarized signature that authorizes the tenant or lessee to engage in commercial medical cannabis activities at the site.

5. A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the facility, loading zones and all areas in which medical cannabis and medical cannabis products will be stored, grown or dispensed.

6. If the applicant is a business entity or any form of entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

7. The full name, date of birth, social security number, present address and telephone number for all property owners and for all owners, supervisors, employees, and persons having a ten percent (10%) or more financial interest in the commercial medical cannabis activity that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity.

8. All property owners and all owners, supervisors, employees, and persons having a ten percent (10%) or more financial interest must submit fingerprints and other necessary information for a criminal background check.

9. Written proof (i.e., California driver's license, California identification card, or certified birth certificate) that all applicants, property owners, supervisors, and employees are eighteen (18) years of age or older.

10. The names and addresses of any other commercial medical cannabis operations currently being operated by the applicant, or that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefore.

11. A full description of the proposed activities and products of the commercial medical cannabis operation.

12. A description of the type of State license(s) that will be required for the proposed operations pursuant to California Business & Professions Code Sections 19300, *et seq.*, including a description of the proposed total canopy area of any cultivation or nursery operation.

13. A detail of the procedures to be utilized at the premises including a description of how chemicals, pesticides and fertilizers will be stored, handled, used and disposed of; and if applicable, manufacturing methods, the transportation process, inventory procedures, and quality control procedures.

14. Proposed hours of operation.
15. A waste disposal plan.
16. If applicable, provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.
17. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the State of California and that it shall maintain compliance during the term of the permit.
18. Authorization for the County, its agents and employees to seek verification of the information contained in the application.
19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
20. Any other information required by the Director of Planning.

7.90.060 Review of application for commercial medical cannabis permit.

A. The Appropriate Authority shall review the application for a commercial medical cannabis permit and associated documents and shall require, if he or she deems necessary, additional information to complete the application. The Appropriate Authority may deem the application incomplete if it does not contain all required information and documents.

B. An application shall not be deemed complete unless all required application fees have been paid.

C. Each commercial medical cannabis permit shall be granted for a one year period and shall expire one (1) year after the date of its issuance.

D. Upon review of a complete application for a commercial medical cannabis permit, the Appropriate Authority shall grant the application if:

1. The proposed commercial medical cannabis activities will comply with all the requirements of the State and the Monterey County Code;
2. The applicant has received all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code;
3. The proposed commercial medical cannabis activities will comply with all provisions of this Chapter; and

4. If applicable, the applicant has obtained a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code.

E. The Appropriate Authority shall deny any application that meets any of the following criteria:

1. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application;

2. Any property owner, supervisor, employee, or persons having a ten percent (10%) or more financial interest in the commercial medical cannabis activity has been convicted of a felony or a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

3. Any person who is listed on the application is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the California Health and Safety Code;

4. If applicable, the applicant failed to obtain or maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code;

5. Any person who is listed on the application is less than eighteen (18) years of age;

6. The proposed commercial medical cannabis operation does not comply with the provisions of this Chapter or State law; or

7. The applicant has not received all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code.

F. If the Appropriate Authority intends to deny the application, the Appropriate Authority shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 7.90.140 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

7.90.070 Commercial medical cannabis permit renewal process and grounds for denial.

A. Each commercial medical cannabis permit shall expire one (1) year after the date of its issuance. Any permit may be renewed by the Appropriate Authority upon the submission of a renewal application by the permittee and upon determination by the Appropriate Authority

that the applicant meets the standards for grant of application pursuant to section 7.90.060. At the time of consideration of a renewal application, the Appropriate Authority shall consider compliance with conditions in the prior term.

B. Any application for renewal shall be filed with the Resource Management Agency/Planning at least thirty (30) calendar days before expiration of the permit. If any of the documentation and information supplied by the applicant pursuant to section 7.90.050 has changed since the grant of the permit, applicant shall submit updated information and documentation with the application for renewal and shall provide such other information as the Director of Planning may require.

C. Any application for renewal shall be denied if:

- 1. The application is filed fewer than thirty (30) calendar days before its expiration;
- 2. The permittee fails to conform to the criteria set forth in this Chapter;
- 3. The permittee is delinquent in payment of County taxes on commercial cannabis activity; or
- 4. The permit is suspended or revoked at the time of the application.

D. If a renewal application is denied, an applicant may file a new application pursuant to this Chapter.

E. An application for renewal shall be not be deemed complete until all application fees have been paid.

F. If the Appropriate Authority intends to deny the renewal, the Appropriate Authority shall specify in writing the reasons for the denial of the renewal, and notify the permittee that the decision shall become final unless the permittee seeks an appeal pursuant to Section 7.90.140 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

7.90.080 Fees.

The filing of an application for a commercial medical cannabis permit, for renewal of a commercial medical cannabis permit, and appeals shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Permit applicants and permittees are responsible for the costs of inspections, investigations, and any other fee-associated activity established pursuant to this Chapter. Fees, fines, and costs specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time.

7.90.090 Commercial medical cannabis permit nontransferable.

A. A commercial medical cannabis permit does not create any interest of value, is not transferable, and automatically terminates upon transfer of ownership.

B. Whenever any individual, corporation, limited liability company, partnership or other type of business entity permitted under this Chapter sells or transfers all or part of its corporate stock, partnership interest or other business interest in a commercial medical cannabis operation, a new commercial medical cannabis permit shall be obtained pursuant to Section 7.90.050 of this Chapter.

C. A commercial medical cannabis permit is issued to and covers only the permittee identified on the permit with respect to the premises identified on the permit. The commercial medical cannabis permit does not run with the land.

7.90.100 Commercial medical cannabis operating requirements.

A. Throughout the term of the commercial medical cannabis permit, each permittee shall not violate this Chapter and shall comply with all of the following:

1. It shall be a violation of this Chapter for a permittee to cultivate, process, manufacture, test, distribute, transport, deliver, provide or allow to be provided cannabis to any person except those persons who are qualified patients or primary caregivers who are in possession of an identification card, or have a verifiable written recommendation from a licensed physician for medical cannabis.

2. The canopy area of medical cannabis located at any premises shall not exceed the maximum canopy limits set by state law and the limits set forth in County's Use Permit issued pursuant to Title 20 or Title 21 of the Monterey County Code. The commercial medical cannabis permit shall specify the canopy limit allowed by the permit.

3. No cannabis shall be smoked, ingested or otherwise consumed on the premises.

4. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the permittee. No person under the age of eighteen (18) shall be allowed on the premises.

5. There shall not be a physician located in or around any commercial medical cannabis operation at any time for the purpose of evaluating patients for the issuance of a medical marijuana recommendation or card.

6. Each permittee shall conspicuously display its permit on the premises. Each commercial medical cannabis operation that engages in delivery services or in

transportation services shall carry a copy of the permit in all vehicles that deliver or transport medical cannabis.

7. Odor prevention devices and techniques, such as a ventilation system with a carbon filter, shall be incorporated to ensure that odors from cannabis are not detectable offsite.

8. No permittee may hold a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, nor may the commercial medical cannabis operation include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed or used on the premises.

9. No medical cannabis or medical cannabis products, or graphics depicting cannabis or cannabis products shall be visible from the exterior of the premises.

10. All medical cannabis and medical cannabis products shall be stored in a secured and locked safe room, safe or vault, and in a manner to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples or immediate sale.

11. Each permittee shall keep accurate records of its commercial medical cannabis activities pursuant to the requirements of Section 19327 of the California Business and Professions Code, as it may be amended.

12. Each permittee shall be responsible and liable for safety and security in and around the commercial medical cannabis operation, and shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft and other crimes. Each permittee shall install and maintain in proper working order, video monitoring equipment capable of providing surveillance of both interior and exterior areas of the permitted establishment. Each permittee shall maintain such surveillance video tapes for a period of at least thirty (30) days and shall make such videotapes available to the County upon demand.

13. Each permittee shall notify the County immediately after discovering any of the following: diversion, theft, loss, or any criminal activity involving the commercial medical cannabis operation; significant discrepancies identified during inventory; or any other breach of security.

14. Each permittee shall provide the Appropriate Authority with the name, telephone number, facsimile number, and e-mail address of a community relations contact to whom the public can provide notice of problems associated with the commercial medical cannabis operation. The permittee shall make a good faith effort to resolve problems without the need for intervention by the County.

15. Any new property owners, supervisors, employees or other persons otherwise engaged in the operation of the commercial medical cannabis operation must

submit their information to the Appropriate Authority within ten (10) days prior to their new ownership, employment or engagement, including fingerprints and other necessary information for a criminal background check.

16. No property owner, supervisor, employee, or other persons otherwise engaged in the operation of the commercial medical cannabis operation may have been convicted of a felony or a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

17. A permittee shall not be delinquent in the payment of all applicable state and County taxes and fees.

18. The property owner(s) who own(s) the premises where the commercial cannabis operation is located must at all times have all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code and the land use entitlements must be operative.

19. When applicable, the permittee must legally hold all required State Licenses under the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*), as it may be amended, and under all other applicable state laws.

20. A permittee shall comply with all applicable federal, state and local laws, ordinances and regulations, including without limitation, County building, zoning and health codes.

B. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises for the purpose of observing compliance of the commercial medical cannabis operation with this Section, including access to and inspection of the commercial medical cannabis operation's records, books, accounts, financial data, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination.

C. It is unlawful for any person having any responsibility over a commercial medical cannabis operation to refuse to allow, impede, obstruct, or interfere with an inspection, or the review of the copying of records and monitoring (including recordings) including, but not limited to, the concealment, destruction, and falsification of any recordings or records.

7.90.110 Cultivation, manufacture, waste, and storage requirements.

A. Each permittee must follow all pesticide use requirements of local, state and federal law.

B. Each permittee must maintain all weighing devices in compliance with local, state or federal law and comply with Chapter 7.60 of the Monterey County Code regarding device registration with the County.

C. Each permittee must follow all local, state and federal requirements for waste disposal.

D. In no case shall any hazardous, flammable or explosive substances be used to process or manufacture cannabis products on site.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

F. All food products, food storage facilities, food-related utensils, equipment and materials shall be approved, used, managed and handled in accordance with Sections 113700-114437 of the California Health and Safety Code, and California Retail Food Code. All food products shall be protected from contamination at all times, and all food handlers must be clean, in good health and free from communicable diseases.

G. Baked products (e.g., brownies, bars, cookies, etc.), tinctures, and other non-refrigerated type items may be sold or distributed at a medical cannabis business.

H. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises of the commercial medical cannabis operation for the purpose of observing compliance with this Section.

7.90.120 Packaging and labeling requirements.

Prior to the sale or the delivery of medical cannabis or medical cannabis product the same shall be labeled and in a tamper-evident packaging. Labels and packages shall at least meet all of the following minimum requirements:

A. Packages and labels shall not be made to be attractive to children.

B. Product labels shall include the following information displayed in a clear and legible font:

1. Manufacture date and source;
2. The statement "SCHEDULE I CONTROLLED SUBSTANCE";
3. The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold type face;
4. The statement "FOR MEDICAL USE ONLY";

5. The statement “THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS”; and

6. The statement “THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION”.

C. For packages containing only dried flowers, the net weight of the cannabis in the package.

D. A warning if nuts or other known allergens are used.

E. List of pharmacologically active ingredients including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

F. Clear indication, in bold typeface, that the product contains cannabis.

G. Identification of the source and date of cultivation and manufacture.

H. Only generic food names may be used to describe edible cannabis products.

I. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises and inspect the permittee’s medical cannabis products for the purpose of observing compliance with this Section.

7.90.130 Suspension or revocation of commercial medical cannabis permit.

Any of the following shall be grounds for suspension or revocation of a commercial medical cannabis permit, based on substantial evidence and following notice and public hearing pursuant to Section 7.90.140 of this Chapter.

A. Failure to comply with one or more of the terms and conditions of the commercial medical cannabis permit;

B. The commercial medical cannabis permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;

C. Any act or omission by a permittee in contravention of the provisions of this Chapter;

D. Any act or omission by a permittee in contravention of State law, or the Monterey County Code;

E. Any act or omission by a permittee that results in the suspension or revocation of the applicable use permit issued under Titles 20 or 21 of the Monterey County Code for the commercial medical cannabis activities;

F. Any act or omission by a permittee that results in the denial, revocation or suspension of that permittee’s State License;

G. Failure to pay applicable State or County taxes on commercial cannabis activity;
or

H. Conduct of the commercial medical cannabis operations in a manner that constitutes a nuisance, where the permittee has failed to comply with reasonable conditions to abate the nuisance.

7.90.140 Procedure for suspension or revocation.

A. If the Appropriate Authority determines that grounds for suspension or revocation of the commercial medical cannabis permit exists pursuant to Section 7.90.130 of this Chapter, the Appropriate Authority shall issue a written Notice of Intention to suspend or revoke the permit, as the case may be. The Notice of Intention shall be served on the permittee, as reported on the permit, and on the property owner, as reported on the latest equalized assessment roll. The Notice of Intention shall be served in accordance with the requirements set forth in Section 7.90.150 of this Chapter. The Notice of Intention shall describe the property, the intention to revoke or suspend the permit, the grounds for suspension or revocation, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the permittee and the owner of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the permit should not be suspended or revoked, and shall notify them of the ten (10) day deadline to submit a written request for a hearing.

B. The permittee and owner shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the commercial medical cannabis permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Appropriate Authority may suspend or revoke the permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the Appropriate Authority shall set a date for a hearing to be held within sixty (60) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of

evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the commercial medical cannabis permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. The Hearing Officer may postpone the hearing date upon good cause shown, continue the hearing during the course of the hearing, and make such other procedural orders and rulings as he or she deems appropriate during the course of the hearing.

5. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.

E. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney fees.

F. If neither permittee nor owner, nor their authorized representatives, appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.90.150 Service requirements.

Wherever this Chapter requires the County to serve notice to an applicant, permittee, or property owner such notice shall be given by the Appropriate Authority, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the physical address of the premises on the date of the mailing of notice.

7.90.160 Enforcement and penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter 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 Chapter 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 and every violation of this Chapter 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, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical cannabis operator or persons related thereto, or associated with, the commercial medical cannabis activity.

7.90.170 Operative date.

This Chapter shall become operative only if the ordinance amending Title 21 relating to medical cannabis uses becomes operative and only if the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this Chapter becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

7.90.180 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections.

SECTION 3. 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 the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE AND OPERATIVE DATE.

A. This ordinance shall become effective on the thirty-first day following adoption, but this ordinance shall not become operative unless the ordinance amending Title 21 relating to

medical cannabis uses becomes operative and unless the Board of Supervisors submits a County tax on commercial cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this ordinance becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

B. As of the operative date of this ordinance, Interim Ordinance No. 5254, as previously amended and extended through February 26, 2017, shall become inoperative in the non-coastal unincorporated area of the County. If the Board of Supervisors does not submit a tax on commercial medical cannabis activity to the voters, the voters do not approve the tax, or the tax is not certified by the County pursuant to Section 15372 of the California Elections Code, Interim Ordinance No. 5254, as previously amended and extended, shall remain in effect through February 26, 2017.

PASSED AND ADOPTED this ____ day of _____, 2016, by the following vote:

AYES:
NOES:
ABSENT:

Chair,
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel

Attachment B

This page intentionally left blank.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 7.95 TO THE MONTEREY COUNTY CODE RELATING TO PERSONAL MEDICAL CANNABIS CULTIVATION

County Counsel Summary

This ordinance adds Chapters 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for cultivation of one hundred square feet total canopy area or less of medical marijuana when such cultivation is by a qualified patient for personal medical use or by a primary caregiver exclusively for the personal medical use of no more than five qualified patients. The permit would cover only the qualified patient or primary caregiver identified on the permit with respect to the premises identified on the permit and would not run with the land. The permit would require the permittee to comply with specific operating requirements relating to matters such as visibility, setbacks, storage of pesticides and fertilizers, use of hazardous substances, and control of odor and light. The ordinance also contains provisions for enforcement.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 7.95 is added to the Monterey County Code to read as follows:

Chapter 7.95 PERSONAL MEDICAL CANNABIS PERMIT

Sections:

- 7.95.010 Findings and purpose.**
- 7.95.020 Applicability.**
- 7.95.030 Definitions.**
- 7.95.040 Personal medical cannabis permit required.**
- 7.95.050 Personal medical cannabis permit application process.**
- 7.95.060 Review of application for personal medical cannabis permit.**
- 7.95.070 Personal medical cannabis permit renewal process and grounds for denial.**
- 7.95.080 Fees.**
- 7.95.090 Personal medical cannabis permit nontransferable.**
- 7.95.100 Personal medical cannabis cultivation requirements.**
- 7.95.110 Suspension or revocation of personal medical cannabis permit.**
- 7.95.120 Procedure for suspension or revocation.**
- 7.95.130 Service requirements.**
- 7.95.140 Enforcement and penalties.**
- 7.95.150 Operative date.**
- 7.95.160 Severability.**

7.95.010 Findings and purpose.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. The federal Controlled Substances Act (21 U.S.C. §§ 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

C. The federal government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement strong and effective regulatory and enforcement systems that will address the threat those state or local laws could pose to public safety, public health, and other law enforcement interests.

D. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing cannabis.

E. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, “CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.

F. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

G. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), held that neither the CUA nor the MMP expressly or impliedly preempt the authority of California counties or cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude medical cannabis cultivation.

H. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*; the “MMRSA”). The MMRSA creates a state licensing program for commercial medical cannabis activities. The MMRSA allows counties and cities to maintain local regulatory authority over medical cannabis. Recognizing that limited cultivation by a qualified patient and primary caregiver is exempt from state licensing requirements under the MMRSA, the County desires to establish minimal

reasonable standards for personal medical cannabis cultivation in order to protect the public health, safety and welfare and prevent nuisance.

I. It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety and allow for cultivation of medical cannabis for personal use within reasonable limits, while protecting the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County and comply with state law and federal guidelines.

J. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to medical cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.

K. To address the added financial burden to the County that may result from this ordinance, including costs associated with processing applications under this ordinance as well as additional law enforcement and other costs, this ordinance requires voter passage of a County tax on commercial medical cannabis activities prior to this ordinance becoming operative.

L. This ordinance is intended to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

7.95.020 Applicability.

This Chapter applies in the unincorporated area of the County of Monterey.

7.95.030 Definitions.

The following words and phrases shall have the following meanings when used in this Chapter:

A. "Applicant" means a person eighteen (18) years of age or older who has submitted an application for a permit or renewal of a permit issued pursuant to this Chapter.

B. "Application" means that form provided by the Appropriate Authority in accordance with this Chapter for the purpose of seeking a personal medical cannabis permit.

C. "Appropriate Authority" means the Director of Planning or his or her designee.

D. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code

as enacted by Chapter 1407 of the Statutes of 1972.

E. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

F. “County” means the County of Monterey.

G. “Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the California Government Code;

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or

3. An independent contractor assigned by an organization or entity which provides hearing officers.

H. “Identification card” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

I. “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

J. “Permittee” means a person issued a County permit under this Chapter.

K. “Personal medical cannabis cultivation” means cultivation by a qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. “Personal medical cannabis cultivation” also includes cultivation by a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

L. “Personal medical cannabis permit” means a permit issued by the County to a

qualified patient or primary caregiver for personal medical cannabis cultivation under this Chapter.

M. “Premises” means the building in which personal medical cannabis cultivation takes place, in addition, any accessory structures and appurtenant areas.

N. “Primary caregiver” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

O. “Property owner” means the individual or entity who is the record owner of the subject property where personal medical cannabis cultivation is located or is proposed to be located.

P. “Qualified patient” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

Q. “State” means the state of California.

7.95.040 Personal medical cannabis permit required.

A. Any qualified patient or primary caregiver who intends to engage in personal medical cannabis cultivation shall obtain a personal medical cannabis permit for the fixed location in which personal medical cannabis cultivation is to occur.

B. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in personal medical cannabis cultivation in the unincorporated portion of Monterey County, unless the County has issued such person a permit under this Chapter and the permit is in effect.

C. If a qualified patient or primary caregiver proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis, he or she must obtain all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code and a commercial cannabis permit pursuant to Chapter 7.90 of the Monterey County Code.

D. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

7.95.050 Personal medical cannabis permit application process.

A. Each application for the establishment of a personal medical cannabis permit shall be filed with the Resource Management Agency/Planning on the form and in the manner prescribed by the Director of Planning. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

B. In all cases, the application shall contain, without limitation, the following documentation:

1. The applicant's name, mailing address, and if available, e-mail address.
2. A 24-hour or nighttime contact phone number.
3. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card, or certified birth certificate).
4. The physical address and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed cultivation will be located.
5. Proof of ownership of premises, or if the premises on which the cultivation is to occur is rented or leased, written permission from the property owner containing the owner(s)' notarized signature that authorizes the tenant or lessee to cultivate medical cannabis at the site.
6. A site map showing the location of the cultivation.
7. Evidence demonstrating that the cultivation will take place in an area one hundred (100) square feet total canopy area or less, and will not exceed ten (10) feet in height.
8. Such other information as the Director of Planning may require.

7.95.060 Review of application for personal medical cannabis permit.

A. The Appropriate Authority shall review the application for a personal medical cannabis permit and associated documents and shall require, if he or she deems necessary, additional information to complete the application. The Appropriate Authority may deem the application incomplete if it does not contain all required information and documents.

B. An application shall not be deemed complete unless all required application fees have been paid.

C. Each personal medical cannabis permit shall be granted for a one year period and shall expire one (1) year after the date of its issuance.

D. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall grant the application if:

1. The proposed personal medical cannabis cultivation will comply with all laws, regulations and ordinances of the State and the Monterey County Code; and

2. The proposed personal medical cannabis cultivation will comply with all provisions of this Chapter, including but not limited to the personal medical cannabis cultivation requirements set forth in section 7.95.100.

E. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall deny any application that meets any of the following criteria:

1. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application;

2. The applicant is less than eighteen (18) years of age;

3. The applicant proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis;

4. The proposed personal medical cannabis cultivation does not comply with all laws, regulations and ordinances of the State and the Monterey County Code; or

5. The proposed personal medical cannabis cultivation does not comply with the requirements of this Chapter.

F. If the Appropriate Authority intends to deny the application, the Appropriate Authority shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.070 Personal medical cannabis permit renewal process and grounds for denial.

A. Each personal medical cannabis permit shall expire one (1) year after the date of its issuance. Any permit may be renewed by the Appropriate Authority upon the submission of a renewal application by the permittee and upon determination by the Appropriate Authority that the application meets the standards for grant of application pursuant to section 7.95.060.

B. Any application for renewal shall be filed with the Resource Management Agency/Planning at least thirty (30) calendar days before expiration of the personal medical cannabis permit. If any of the documentation and information supplied by the applicant pursuant to section 7.95.050 has changed since the grant of the permit, applicant shall submit updated information and documentation with the application for renewal and shall provide such other information as the Director of Planning may require.

C. Any application for renewal shall be denied if:

1. The application is filed fewer than thirty (30) calendar days before its expiration;
2. The permittee fails to conform to the criteria set forth in this Chapter; or
3. The personal medical cannabis permit is suspended or revoked at the time of the application.

D. If a renewal application is denied, an applicant may file a new application pursuant to this Chapter.

E. An application shall not be deemed complete unless all required application fees have been paid.

F. If the Appropriate Authority intends to deny the renewal, the Appropriate Authority shall specify in writing the reasons for the denial of the renewal, and notify the permittee that the decision shall become final unless the permittee seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.080 Fees.

The filing of an application for a personal medical cannabis permit, for renewal of a personal medical cannabis permit, and appeals shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Permit applicants and permittees are responsible for the costs of inspections, investigations, and any other fee-associated activity established pursuant to this Chapter. Fees, fines, and costs specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time.

7.95.090 Personal medical cannabis permit nontransferable.

A. A personal medical cannabis permit does not create any interest of value and is not transferable.

B. A personal medical cannabis permit is issued to and covers only the qualified patient or primary caregiver identified on the permit with respect to the premises identified on the permit. The personal medical cannabis permit does not run with the land.

7.95.100 Personal medical cannabis cultivation requirements.

Throughout the term of the personal medical cannabis permit, each permittee shall not violate this Chapter and shall comply with all of the following:

A. The personal medical cannabis cultivation shall not exceed one hundred (100) square feet of total canopy area and shall not exceed ten (10) feet in height.

B. No cannabis odors shall be detectable from offsite, and the use of odor prevention devices, such as a ventilation system with a carbon filter, shall be utilized if necessary.

C. No medical cannabis or medical cannabis products shall be visible from the exterior of the premises.

D. Unless fully enclosed within an accessory structure, all personal medical cannabis cultivation shall be contained within a fully enclosed locked fence area and shall maintain the following minimum setbacks from property lines:

1. Front: fifty (50) feet or behind the main structure;
2. Side: thirty (30) feet; and
3. Rear: thirty (30) feet.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

F. In no case shall any hazardous, flammable, or explosive substances be used in conjunction with medical cannabis on the premises.

G. Grow lights in a residence or a detached accessory building shall not exceed 1200 watts total.

7.95.110 Suspension or revocation of personal medical cannabis permit.

Any of the following shall be grounds for suspension or revocation of a personal medical cannabis permit, based on substantial evidence and following notice and public hearing pursuant to Section 7.95.120 of this Chapter.

A. The personal medical cannabis permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;

B. Any act or omission by a permittee in contravention of the provisions of this Chapter;

C. Any act or omission by a permittee in contravention of State law or the Monterey County Code;

D. Conduct of the permittee in a manner that constitutes a nuisance, where the permittee has failed to comply with reasonable conditions to abate the nuisance; or

E. Failure to comply with one or more of the terms and conditions of the personal medical cannabis permit.

7.95.120 Procedure for suspension or revocation.

A. If the Appropriate Authority determines that grounds for suspension or revocation of the personal medical cannabis permit exists pursuant to Section 7.95.110 of this Chapter, the Appropriate Authority shall issue a written Notice of Intention to revoke or suspend the permit, as the case may be. The Notice of Intention shall be served on the permittee, as reported on the permit. The Notice of Intention shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter. The Notice of Intention shall describe the property, the intention to revoke or suspend the permit, the grounds for revocation or suspension, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the permittee of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the permit should not be suspended or revoked, and shall notify them of the ten (10) day deadline to submit a written request for a hearing.

B. The permittee shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the personal medical cannabis permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Appropriate Authority may suspend or revoke the permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the Appropriate Authority shall set a date for a hearing to be held within sixty (60) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the personal medical cannabis permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. The Hearing Officer may postpone the hearing date upon good cause shown, continue the hearing during the course of the hearing, and make such other procedural orders and rulings as he or she deems appropriate during the course of the hearing.

5. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.

E. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney fees.

F. If neither permittee nor their authorized representatives appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.95.130 Service requirements.

Wherever this Chapter requires the County to serve notice to an applicant or permittee, such notice shall be given by the Appropriate Authority, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the physical address of the premises on the date of the mailing of notice.

7.95.140 Enforcement and penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter 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 Chapter 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 and every violation of this Chapter 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, as a public nuisance, any violation of this

Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical cannabis activity or persons related thereto, or associated with, the commercial medical cannabis activity.

7.95.150 Operative date.

This Chapter shall become operative only if the ordinance amending Title 21 relating to medical cannabis uses becomes operative and only if the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this Chapter becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

7.95.160 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections.

SECTION 2. 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 the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE AND OPERATIVE DATE.

This ordinance shall become effective on the thirty-first day following adoption, but this ordinance shall not become operative unless the ordinance amending Title 21 relating to medical cannabis uses becomes operative and unless the Board of Supervisors submits a County tax on commercial cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this ordinance becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

PASSED AND ADOPTED this ____ day of _____, 2016, by the following vote:

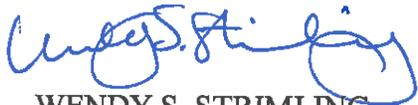
AYES:
NOES:
ABSENT:

Chair,
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel

Attachment C

This page intentionally left blank.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 7.100 TO THE MONTEREY COUNTY CODE IMPOSING A COMMERCIAL CANNABIS BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESS

County Counsel Summary

This ordinance adds Chapter 7.100 to the Monterey County Code to impose a County general tax on commercial cannabis businesses in the unincorporated area of Monterey County as of January 1, 2017. The ordinance establishes the following tax rates: for cultivation, the tax rate is \$15 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase to \$25 per square foot by June 30, 2022, and to increase thereafter based on the Consumer Price Index; for nursery cultivation, the tax rate is \$1.50 per square foot of authorized canopy through June 30, 2020, to increase to \$5 per square foot by June 30, 2022, and to increase thereafter based on the Consumer Price Index; and for all other commercial cannabis businesses, including dispensaries, manufacturing, testing, transporting, distributing, and delivery, the tax rate is five percent of gross receipts per fiscal year through June 30, 2020, to increase thereafter by two and one-half percent per fiscal year, not to exceed a maximum tax rate of ten percent per fiscal year on gross receipts. The tax applies to commercial medical cannabis businesses, and if legalized under state law, to nonmedical cannabis or marijuana businesses. Personal cultivation and personal use, as further delineated in the ordinance, are exempt from the tax. The ordinance contains payment and reporting requirements and enforcement provisions and authorizes the County Treasurer-Tax Collector to administer the tax. The tax is for general governmental purposes and will go into effect only if the tax is approved by a majority of the voters voting on the tax at an election.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 7.100 is added to the Monterey County Code to read as follows:

**Chapter 7.100
COMMERCIAL CANNABIS BUSINESS TAX**

Sections:

- 7.100.010 Title.
- 7.100.020 General tax.
- 7.100.030 Purpose of the ordinance.
- 7.100.040 Definitions.
- 7.100.050 Tax imposed.
- 7.100.060 Reporting and remittance of tax.
- 7.100.070 Payments and communications –timely remittance.
- 7.100.080 Payment – when taxes deemed delinquent.

- 7.100.090 Notice not required by County.
- 7.100.100 Penalties and interest
- 7.100.110 Refunds and credits.
- 7.100.120 Refunds and procedures.
- 7.100.130 Exemptions from the tax.
- 7.100.140 Administration of tax.
- 7.100.150 Appeal procedure.
- 7.100.160 Enforcement –action to collect
- 7.100.170 Apportionment.
- 7.100.180 Constitutionality and legality.
- 7.100.190 Audit and examination of records and equipment.
- 7.100.200 Other licenses, permits, taxes or charges.
- 7.100.210 Payment of tax does not authorize unlawful business.
- 7.100.220 Deficiency determinations.
- 7.100.230 Failure to report – nonpayment and fraud.
- 7.100.240 Tax assessment –notice of requirements.
- 7.100.250 Tax assessment – hearing, application, and determination.
- 7.100.260 Conviction for chapter violation – taxes not waived.
- 7.100.270 Violation deemed misdemeanor –penalty.
- 7.100.280 Severability.
- 7.100.290 Remedies cumulative.
- 7.100.300 Amendment or repeal.

7.100.010 Title.

This ordinance shall be known as the Commercial Cannabis Business Tax Ordinance. This ordinance shall be applicable in the unincorporated territory of the County of Monterey, which shall be referred to herein as “County.”

7.100.020 General tax.

The Commercial Cannabis Business Tax is enacted solely for general governmental purposes for the County and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the County's general fund and used for general governmental purposes.

7.100.030 Purpose of the ordinance.

This ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by commercial cannabis businesses in the unincorporated area of the County, pursuant to the state Medical Marijuana Regulation and Safety Act, specifically California Business and Professions Code section 19348;

B. To impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the unincorporated area of the County if the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” is approved by the voters in the November 2016 election, or if nonmedical marijuana activity otherwise becomes legal in the State of California, notwithstanding if state law uses the term “marijuana” or “cannabis”;

C. To impose a tax on lawful commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax;

D. To specify the type of tax and rate of tax to be levied and the method of collection; and

E. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

7.100.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. “Business” shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

C. “Cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. “Cannabis product” also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site. The plant canopy

does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

E. “Commercial cannabis business” means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the unincorporated area of the County, whether or not carried on for gain or profit.

F. “Commercial cannabis business tax,” “business tax,” or “commercial cannabis tax” means the tax due pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.

G. “Commercial cannabis cultivation” means cultivation conducted by, for, as part of a commercial cannabis business.

H. “County permit” means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business. The term “County permit” includes a commercial medical cannabis permit issued pursuant to Chapter 7.90 of the Monterey County Code, and if nonmedical marijuana business becomes legal under state law, the term “County permit” includes such permit as County may require to operate or engage in nonmedical commercial cannabis business.

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

J. “Delivery” means the commercial transfer of cannabis or cannabis products from a dispensary.

K. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

L. “Distributor” or “distribution” or “distribution facility” means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.

M. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

N. “Engaged in business” means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether

operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the County if:

1. Such person or person's employee maintains a fixed place of business within unincorporated area of the County for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the unincorporated area of County for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the unincorporated area of County for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the unincorporated area of County;
5. Such person or person's employee performs work or renders services in the unincorporated area of County; and
6. Such person or person's employee utilizes the streets within the unincorporated area of County in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

O. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the unincorporated area of County.

P. "Fiscal year" means July 1 through June 30 of the following calendar year.

Q. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;

2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;

6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

7. Cash value of sales, trades or transactions between departments or units of the same business;

8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

9. Transactions between a partnership and its partners;

10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

a. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or

b. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or

c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above;

12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

R. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid County permit.

S. "Nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

T. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

U. "Personal medical cannabis cultivation" means cultivation by a qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. "Personal medical cannabis cultivation" also includes cultivation by a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

V. "Sale" means and includes any sale, exchange, or barter.

X. "Square foot" or "square footage" means the maximum amount of canopy for commercial cannabis cultivation authorized by a County permit issued to a person engaging in commercial cannabis business, or by a state license in the absence of a County permit or license, not deducting for unutilized square footage, and shall be the basis for the tax base for cultivation.

Y. “State” means the State of California.

Z. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.* or other applicable state law.

AA. “Testing laboratory” means a facility, entity, or site in the state that offers or performs testing of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state; and

2. Registered with the California State Department of Public Health.

BB. “Transport” means the transfer of cannabis or cannabis products from the permitted business location of one permittee or licensee to the permitted business location of another permittee or licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to state law.

CC. “Transporter” means a person issued all required state and County permits to transport cannabis or cannabis products between permitted facilities.

DD. “Treasurer-Tax Collector” means the Treasurer-Tax Collector of the County of Monterey, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter.

7.100.050 Tax imposed.

A. There is established and imposed a commercial cannabis business tax at the rates set forth in this Chapter.

B. Tax on commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective January 1, 2017 through June 30, 2020 for commercial cannabis cultivation, excluding nurseries, shall be set at fifteen dollars (\$15.00) per fiscal year, per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for commercial cannabis cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each

fiscal year by five dollars (\$5.00) per square foot of authorized canopy, not to exceed the maximum tax rate of twenty-five dollars (\$25.00) per square foot. Beginning on July 1, 2022 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

C. Tax on cultivation of cannabis as a nursery.

1. Every person who is engaged in cultivation of cannabis as a nursery as defined in this Chapter in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective January 1, 2017 through June 30, 2020 shall be set at two dollars (\$2.00) per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for cultivation of cannabis as a nursery, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for cultivation of cannabis as a nursery allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation as a nursery be deducted for the purpose of determining the tax for cultivation as a nursery.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each fiscal year by one dollar and fifty cents (\$1.50) per square foot of canopy utilized for cannabis cultivation as a nursery, not to exceed the maximum tax rate of five dollars (\$5.00) per square foot per annum. Beginning on July 1, 2022 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

D. Tax on all other commercial cannabis businesses.

1. Every person who is engaged in business as a dispensary, manufacturer, testing laboratory, transporter, distributor, or distribution facility, or engaging in delivery of cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective January 1, 2017 through June 30, 2020 shall be set at five percent (5%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each fiscal year by two and one half percent (2.5%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts.

7.100.060 Reporting and remittance of tax.

The commercial cannabis business tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

A. Each person owing a commercial cannabis business tax shall, on or before the last day of the month following the close of each fiscal year quarter, prepare and submit a tax statement on the form prescribed by the Treasurer-Tax Collector and remit to the Treasurer-Tax Collector the tax due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year. Each business shall pay on or before the last day of the month following the close of each calendar quarter.

B. If the commercial cannabis business tax is owed on commercial cannabis cultivation, the square footage tax due shall be paid based on the square footage of cultivation authorized by the County permit. The tax will not be prorated or adjusted for any reduction in the square footage authorized but not utilized for cultivation. If the cultivation begins in the middle of a fiscal year, the Treasurer-Tax Collector shall prorate, in monthly increments, the amount due for the fiscal year.

C. All tax statements shall be completed on forms prescribed by the Treasurer-Tax Collector.

D. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Treasurer-Tax Collector upon cessation of business for any reason.

E. The Treasurer-Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Treasurer-Tax Collector deems necessary to insure collection of the tax.

F. The Treasurer-Tax Collection may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

7.100.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Treasurer-Tax Collector on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the County is open to the public.

7.100.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Treasurer-Tax Collector on or before the due date as specified in Sections 7.100.060 and 7.100.070.

7.100.090 Notice not required by the County.

The Treasurer-Tax Collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

7.100.100 Penalties and interest.

A. Any person who fails or refuses to pay any commercial cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one and one-half percent (1.5%) per month; and

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a commercial cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

7.100.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 7.100.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

7.120.120 Refunds and procedures.

A. Whenever the amount of any commercial cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the County under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Treasurer-Tax Collector within one (1) year of the date the tax was originally due and payable.

B. The Treasurer-Tax Collector, his or her deputies or any other County officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Treasurer-Tax Collector to do so.

C. In the event that the commercial cannabis business tax was erroneously paid and the error is attributable to the County, the County shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

7.100.130 Exemptions from the tax.

A. The provisions of this Chapter shall not apply to personal medical cannabis cultivation.

B. If the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" is approved by the voters in the November 2016 election, or if nonmedical cannabis use otherwise becomes legal in the State of California, the provisions of this Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use. If a state law is adopted that legalizes nonmedical use of cannabis, the Treasurer-Tax Collector may implement this exemption to conform to such exemption for personal use as may be included in state law.

7.100.140 Administration of the tax.

A. It shall be the duty of the Treasurer-Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Treasurer-Tax Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all commercial cannabis business taxpayers forms for the reporting of the tax;
2. Increase tax rates in accordance with this Chapter;
3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the County as provided in this Chapter;

5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter;
7. Determine amounts owed and enforce collection pursuant to this Chapter.

7.100.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fifteen days of the serving or mailing of the determination of tax due. The Clerk shall fix a time and place for hearing such appeal, and the Clerk shall give notice in writing to such operator at the last known place of address. The finding of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

7.100.160 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the County. Any person owing money to the County under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Treasurer-Tax Collector may, within three (3) years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Treasurer-Tax Collector. The lien shall also specify that the Treasurer-Tax Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from of filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three (3) years after any individual or business is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection C of this Section, the Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to the Sheriff

and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Treasurer-Tax Collector shall approve the fees for publication in the newspaper.

D. At any time within three (3) years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

7.100.170 Apportionment.

If a business subject to the tax is operating both within and outside the unincorporated County, it is the intent of the County to apply the commercial cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the County. For purposes of apportionment as may be required by law, the Treasurer-Tax Collector may promulgate administrative procedures for apportionment in accordance with state law.

7.100.180 Constitutionality and legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law.

7.100.190 Audit and examination of records and equipment.

A. The Treasurer-Tax Collector shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the County, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter.

B. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have

been liable for the collection of and payment to the County, which records the Treasurer-Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

7.100.200 Other licenses, permits, taxes, fees or charges.

Nothing contained in this Chapter 7.100 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or chapter of this code or any other ordinance or resolution of the county, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the county. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code.

7.100.210 Payment of tax does not authorize unlawful business.

A. The payment of a commercial cannabis business tax required by this Chapter, and its acceptance by the County, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

7.100.220 Deficiency determinations.

If the Treasurer-Tax Collector is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 7.100.240.

7.100.230 Failure to report--nonpayment, fraud.

A. Under any of the following circumstances, the Treasurer-Tax Collector may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Treasurer-Tax Collector, filed a corrected statement, or furnished to the Treasurer-Tax Collector adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or
4. If the Treasurer-Tax Collector determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Treasurer-Tax Collector to be due or estimated by the Treasurer-Tax Collector, after consideration of all information within the Treasurer-Tax Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

7.100.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Treasurer-Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Treasurer-Tax Collector for such purpose, then to such person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

7.100.250 Tax assessment - hearing, application and determination.

Within ten (10) days after the date of service the person may apply in writing to the Treasurer-Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within the time herein prescribed, the tax assessed by the Treasurer-Tax Collector shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Treasurer-Tax Collector shall cause the matter to be set for hearing before him or her not later than thirty-five (35) days after the receipt of the application, unless a

later date is agreed to by the Treasurer-Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Treasurer-Tax Collector to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Treasurer-Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Treasurer-Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 7.100.240 for giving notice of assessment.

7.100.260 Conviction for chapter violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

7.100.270 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and shall be punishable therefore as provided in Chapter 1.20 of this Code.

7.100.280 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

7.100.290 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under Title 1 of the County Code and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

7.100.300 Amendment or repeal.

Chapter 7.100 of the Monterey County Code may be repealed or amended by the Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the County of Monterey affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the Board of Supervisors has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or

C. The collection of the tax imposed by this Chapter, even if the County had, for some period of time, failed to collect the tax.

SECTION 3. 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 the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption. This ordinance shall become operative on January 1, 2017 and only if approved by a majority of the voters voting on the tax at an election.

SECTION 5. BOARD AMENDMENTS. The Board of Supervisors of the County of Monterey is hereby authorized to amend Chapter 7.100 of the Monterey County Code as adopted by this Ordinance in any manner that does not increase the tax rate above the maximum rate specified for each category of business or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution

PASSED AND ADOPTED this ____ day of _____, 2016, by the following vote:

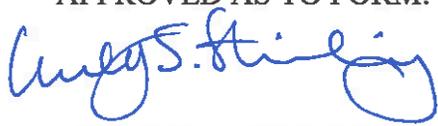
AYES:
NOES:
ABSENT:

Jane Parker, Chair
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel

Attachment D

This page intentionally left blank.

EXHIBIT D

Example of County Cannabis Business Tax Implementation – Year by Year			
	Cultivation	Nurseries	All Other Cannabis Business
Year 1 (1/1/2017)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 2 (7/1/2018)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 3 (7/1/2019)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 4 (7/1/2020)	\$20/sq. ft.	\$3.50/sq. ft.	7.5% Gross Receipts
Year 5 (7/1/2021)	\$25/sq. ft.	\$5/sq. ft.	10% Gross Receipts
Year 6 (7/1/2022)	\$25/sq. ft. + CPI	\$5/sq. ft. + CPI	10% Gross Receipts (No CPI)
Year 7 Onward	Prior Year + CPI	Prior Year + CPI	10% Gross Receipts (No CPI)

Other Jurisdictions – Draft Tax Rates as of 6-30-16

	Monterey County	Salinas	Gonzales	Greenfield	King City*
Starting/Minimum	\$15	\$15	\$15	\$15	11.47*
Maximum (NTE)	\$25	\$25	\$25	\$25	11.47*
Guaranteed Base Period	3 Years	3 Years	3 Years	None	None
Rate Increase Method	Automatic	City Council	City Council	City Council	City Council
CPI	Yes	Yes	Yes	No	No
Expected # of Permits	150-300	3	3	12 to 15	6 to 12

*King City proposing weighted tax: 5,000 sq. ft. or less = \$25/s.f.; 5,001sq. ft. or more = \$7.50/s.f. (Blended avg. of \$11.47/s.f.)

Attachment E

This page intentionally left blank.

Attachment E. Draft Resolution

Resolution No. _____
Resolution Calling For an Election To Submit)
to The Voters of the County of Monterey)
The Question of Imposing a Tax on)
Commercial Cannabis Activity)

This resolution is made with reference to the following facts and circumstances:

A. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (California Business & Professions Code §§ 19300, *et seq.*; the “MMRSA”). Under Section 19348 of the Business & Professions Code, a county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, selling or distributing medical cannabis and medical cannabis products by commercial cannabis businesses.

B. The Board of Supervisors of the County of Monterey has adopted cannabis regulations to prevent nuisance, provide for effective controls, and enable medical cannabis patients to obtain cannabis from safe sources, and the County wishes to provide appropriate permitting and revenue for the County in a manner consistent with state law.

C. The initiative measure “California Control, Regulate and Tax Adult Use of Marijuana Initiative” legalizing certain nonmedical commercial marijuana activity has qualified for the statewide general election in November and authorizes the County to impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the unincorporated area of the County .

D. Both medical and non-medical commercial marijuana activities will generate demands on County government and services.

E. To address the added financial burden to the County that may result from the commercial cannabis activities, the County seeks to appropriately regulate cannabis facilities and seeks additional funding for County services. All revenues received from the tax will be deposited in the general fund of the County to be expended for general purposes.

F. It is the intent of the County of Monterey for every person engaged in a commercial cannabis business activity in the unincorporated area of the County to pay the County commercial cannabis (marijuana) business tax.

G. Pursuant to Section 2 of Article XIII C of the California Constitution and Section 53723 of the California Government Code, the Board of Supervisors may not adopt a general tax unless and until it is submitted to the electorate and approved by a majority vote.

H. A two-thirds majority vote of the Board of Supervisors is legally required by Section 53724 of the California Government Code to present a general tax at an election, which means a four-fifths vote when all five Supervisors are present.

I. The State of California is holding a statewide general election on November 8, 2016; and

J. The Board of Supervisors is authorized by Sections 10400-10401 of the California Elections Code to consolidate two or more elections which are called to be held on the same day in the same territory;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Call for Election. The Board of Supervisors hereby orders an election to be held on November 8, 2016 within the boundaries of Monterey County to submit to the electorate the following question:

TAX ON CANNABIS BUSINES	
Shall the ordinance imposing a tax on commercial marijuana businesses in the unincorporated area of Monterey County only (not cities) up to a maximum of: \$25 per square foot on cultivation with an annual adjustment by Consumer Price Index (CPI) thereafter; \$5 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other marijuana business activities with no CPI, potentially generating millions of dollars annually to help fund County services, be adopted?	YES NO

2. Consolidation of Elections. Pursuant to Sections 10400-10401 of the Elections Code, the Board of Supervisors hereby orders the consolidation of the statewide general election called for November 8, 2016 and the election on the commercial cannabis business tax.

3. Conduct of Election. The Clerk of the Board of Supervisors and the Registrar of Voters are hereby directed to take all steps to hold the election in accordance with law and these specifications, and the Registrar of Voters shall render all services specified by the Elections Code relating to the election, such service to include the publication of all required notices of the elections.

4. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 2016, upon motion of Supervisor _____, seconded by Supervisor _____, and carried by the following vote, to wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book _____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
, Deputy