

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA AMENDING CHAPTER 7.100 OF THE MONTEREY COUNTY CODE TO REDUCE COMMERCIAL CANNABIS BUSINESS TAX RATES, TO REMOVE AUTOMATIC INCREASES, AND TO WAIVE PENALTIES AND INTEREST FOR CULTIVATION FOR THE SECOND AND THIRD QUARTERS OF FISCAL YEAR 2021-22

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to lower certain commercial cannabis business tax rates, remove automatic increases from all tax rates, and add language concerning the confidentiality of tax information consistent with state law. The ordinance establishes the following tax rates effective January 1, 2022: for indoor cultivation, the tax rate is \$7.00 per fiscal year per square foot of authorized canopy; for mixed light cultivation, the tax rate is \$3.00 per fiscal year per square foot of authorized canopy; for outdoor cultivation, the rate is \$1.00 per fiscal year per square foot of authorized canopy; and for distribution, the rate is 0% of gross receipts per fiscal year. The ordinance also removes automatic increases from all tax rates. This ordinance does not preclude the County from adoption of an ordinance in the future to reinstate the maximum tax rates approved by the Monterey County voters on November 8, 2016. Lastly, the ordinance directs the Monterey County Treasurer-Tax Collector to waive all penalties and interest on unpaid installments for the second and third quarters of Fiscal Year 2021-2022 of the annual commercial cannabis business tax imposed on cultivation. The ordinance does not relieve cultivators from any obligation to pay the total annual tax due, but simply allows cultivators to avoid second and third quarter penalties and interest if payment is received by the Treasurer-Tax Collector on or before July 31, 2022.

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

SECTION 1. 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. Pursuant to California Revenue and Taxation Code sections 7284 and 34021.5, Monterey County is permitted to impose taxes on cannabis.

C. On July 12, 2016, the Monterey County Board of Supervisors adopted inland zoning regulations establishing criteria for issuing local land use permits (Ordinance Number

5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code). On July 19, 2016, the Board of Supervisors adopted regulations establishing criteria for issuing local business permits (Ordinance Numbers 5272 and 5273, codified at Monterey County Code Chapters 7.90 and 7.95). All of these ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to California Elections Code section 15372.

D. On November 8, 2016, the voters approved the commercial cannabis business tax (Measure Y, codified at Monterey County Code Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Elections Code section 15372. Specifically, the voters approved a tax on commercial cannabis activities in the unincorporated area of Monterey County up to a maximum of: \$25.00 per square foot on cultivation with an annual adjustment by Consumer Price Index (“CPI”) thereafter; \$5.00 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other cannabis business activities with no CPI adjustment.

E. On July 24, 2018, the Board of Supervisors adopted Ordinance Number 5305, which amended Monterey County Code Chapter 7.100 to reduce the commercial cannabis tax rates. The ordinance established the following tax rates effective July 1, 2018: for indoor cultivation, the tax rate is \$8.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the CPI; for mixed light cultivation, the tax rate is \$5.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the CPI; for nursery cultivation, the tax rate is \$1.00 per square foot of authorized canopy through June 30, 2020, to increase by \$1 per square foot per fiscal year until a maximum rate of \$5.00 per square foot is reached, and to increase thereafter based on the CPI; for manufacturers, the tax rate is 2.5% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for distributors, the tax rate is 2% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for dispensaries, the tax rate is 4% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 0.5% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; and for testers, the tax rate is 1% of gross receipts per fiscal year with no increase.

F. On April 21, 2020, the Board of Supervisors adopted Urgency Ordinance Number 5326 to waive penalties and interest on the County’s commercial cannabis business taxes for the third quarter of Fiscal Year 2019-2020.

G. On May 19, 2020, the Board of Supervisors adopted Ordinance Number 5330, which amended Monterey County Code Chapter 7.100 to suspend the automatic increases on the

County's commercial cannabis business tax rates in Fiscal Year 2020-2021.

H. On May 25, 2021, the Board of Supervisors adopted Ordinance Number 5349, which amended Monterey County Code Chapter 7.100 to suspend the automatic increases on the County's commercial cannabis business tax rates in Fiscal Year 2021-2022.

I. On July 13, 2021, the Board of Supervisors adopted Ordinance Number 5355, which amended Monterey County Code Chapter 7.100 to establish the County's commercial cannabis business tax rate for outdoor cannabis cultivation.

J. The Monterey County Board of Supervisors directed preparation of this ordinance after evaluating information provided by staff and the public concerning commercial cannabis business tax rates, the Fiscal Year 2022-2023 automatic increases, the ongoing COVID-19 pandemic, and an apparent market correction that is occurring in the licensed cannabis industry. This combination has resulted in turmoil for cannabis businesses, as they are not eligible for federal assistance or traditional banking relief to survive the economic downturn. As such, many cannabis businesses face permanent closure. The permanent closure of cannabis businesses could cause widespread unemployment, abandonment of ongoing greenhouse rehabilitation in the Salinas Valley, and a potential reversion to unlicensed production and sale of cannabis.

K. As evidenced by California Cannabis Authority data from August 2021 through December 2021, retail cannabis prices were stable relative to wholesale prices for raw cannabis product. This suggests that other stages of the supply chain were not impacted as directly and acutely as cultivators, who were disproportionately impacted by the market correction. Cultivators incurred growing costs without the ability to recoup them, while other stages of the supply chain were likely to increase their margins because they could procure raw product at lower prices. For this reason, waivers of penalties and interest on unpaid installments of the commercial cannabis business tax in this ordinance shall apply strictly to cultivation.

L. The Monterey County Board of Supervisors directed the preparation of this ordinance to reduce certain commercial cannabis business tax rates (for those described in amended Monterey County Code Section 7.100.050, herein, those rates shall be retroactive to January 1, 2022, the first day of the third fiscal quarter of FY 2021-2022), remove automatic increases on commercial cannabis business tax rates, and direct the Monterey County Treasurer-Tax Collector to waive penalties and interest on unpaid installments of the tax imposed on cultivation for the second and third quarters of Fiscal Year 2021-2022.

M. The Board of Supervisors reserves its right to later restore higher tax rates up to the maximum amounts approved by the voters in Measure Y (2016) and to include taxation of any commercial cannabis activity as approved by the voters in Measure Y. Such restoration of tax rates would not constitute an increase in tax rates that would require voter approval.

SECTION 2. Waiver.

A. The Monterey County Treasurer-Tax Collector shall waive all penalties and interest on unpaid installments of the annual commercial cannabis business tax imposed on cultivation for the second and third quarters of Fiscal Year 2021-2022.

B. The second and third quarter installments of the annual commercial cannabis business tax on cultivation must be received by the Treasurer-Tax Collector by July 31, 2022 to be eligible for waiver of penalties and interest.

C. The fourth quarter installment of the annual commercial cannabis business tax on cultivation must be received by the Treasurer-Tax Collector by July 31, 2022.

D. Penalties and interest will be reinstated on any installments not paid by July 31, 2022.

E. Cannabis businesses conducting cultivation activities may pay quarterly installments at any time prior to July 31, 2022.

F. The Treasurer-Tax Collector is authorized and directed to take such other and further actions as may be necessary or appropriate to implement the intent and purposes of this ordinance.

SECTION 3. Section 7.100.050 of the Monterey County Code is amended to read as follows:

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

B. There shall be a tax on indoor commercial cannabis cultivation except nurseries. Every person who is engaged in commercial cannabis indoor cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate for commercial cannabis indoor cultivation, excluding nurseries, shall be seven dollars (\$7.00) 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 indoor cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis indoor 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.

C. There shall be a tax on mixed light commercial cannabis cultivation except nurseries. Every person who is engaged in commercial cannabis mixed light cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate for commercial cannabis mixed light cultivation, excluding nurseries, shall be three dollars (\$3.00) 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 mixed light cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis mixed light 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.

D. There shall be a tax on outdoor commercial cannabis cultivation except nurseries. Every person who is engaged in commercial cannabis outdoor cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate for commercial cannabis outdoor cultivation, excluding nurseries, shall be one dollar (\$1.00) 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 indoor cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis indoor 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.

E. There shall be a tax on commercial cultivation of cannabis as a nursery. Every person who is engaged in the commercial 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 tax rate shall be one dollar (\$1.00) 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.

F. There shall be a tax on commercial cannabis manufacturers. Every person who is engaged in business as a manufacturer of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate shall be three and one-half percent (3.5%) of the gross receipts per fiscal year.

G. There shall be a tax on commercial cannabis distributors or distribution facilities. Every person who is engaged in business as a distributor or distribution facility of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate shall be zero percent (0%) of the gross receipts per fiscal year.

H. There shall be a tax on commercial cannabis testing laboratories. Every person who is engaged in business as a testing laboratory of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate shall be one percent (1%) of the gross receipts per fiscal year.

I. There shall be a tax on commercial cannabis dispensaries. Every person who is engaged in business as a dispensary of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate shall be four and one-half percent (4.5%) of the gross receipts per fiscal year.

SECTION 4. Subsection (A) of Section 7.100.060 of the Monterey County Code is amended to read as follows:

A. Every person who is engaged in commercial cannabis business activity, including, but not limited to commercial cannabis distributors or distribution facilities as these terms are used in Section 7.100.050(G) of this Chapter, 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.

SECTION 5. Section 7.100.190 of the Monterey County Code is amended to read as follows:

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 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.

C. All tax returns and information furnished by any person pursuant to this Chapter shall be confidential and shall not be open to public inspection, nor the specific contents thereof disclosed by the County except as necessary in the performance of official duty pursuant to this Chapter, or in the course of any proceeding, hearing or litigation involving the existence or amount of the tax liability of such persons, or with the written consent of the person or an authorized representative.

SECTION 6. 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 7. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption. The reductions to tax rates governed by Section 7.100.050 of the Monterey County Code shall be retroactive to January 1, 2022, the first day of the third fiscal quarter of FY 2021-2022.

PASSED AND ADOPTED this ____ day of March 2022, by the following vote:

AYES:

NOES:

ABSENT:

Mary Adams, Chair,
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

KELLY L. DONLON
Assistant County Counsel