

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA
AMENDING CHAPTER 7.100 OF THE MONTEREY COUNTY CODE TO REDUCE
CERTAIN COMMERCIAL CANNABIS BUSINESS TAX RATES AND WAIVE
PENALTIES AND INTEREST BY RESOLUTION**

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to lower certain commercial cannabis business tax rates. The ordinance establishes the following tax rates retroactive to October 1, 2021: for indoor cultivation, the tax rate is \$3.00 per fiscal year per square foot of authorized canopy; and for mixed light cultivation, the tax rate is \$2.00 per fiscal year per square foot of authorized canopy. 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. This ordinance also amends Chapter 7.100 of the Monterey County Code to authorize the Board of Supervisors to, by resolution, waive or conditionally waive penalties and interest on delinquent commercial cannabis business taxes. Finally, this ordinance extends the Board's conditional waiver of 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, adopted in Ordinance Number 5371, from July 31, 2022 to January 31, 2023, and expands the conditional waiver to include the fourth quarter of Fiscal Year 2021-2022.

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 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. On March 1, 2022, the Board of Supervisors adopted Ordinance Number 5371, which amended Monterey County Code Chapter 7.100 to reduce certain commercial cannabis business tax rates for cultivation, remove automatic increases, and waive penalties and interest for cultivation activities in the second and third quarters of Fiscal Year 2021-2022.

K. 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 for cultivation, outcomes from the small industry focus groups, the sunset of state provisional licenses, the ongoing COVID-19 pandemic, and an apparent market correction in the licensed cannabis industry, as evidenced by California Cannabis Authority data from August 2021 through April 2022. These factors have caused turmoil for cannabis businesses, as they are not eligible for federal assistance or traditional banking relief to survive the economic downturn. As such, many 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 widespread unlicensed production and sale of cannabis.

L. Based on these factors, the Monterey County Board of Supervisors directed the preparation of this ordinance to reduce certain commercial cannabis business tax rates for cultivation (for those described in amended Monterey County Code Section 7.100.050, herein, those rates shall be retroactive to October 1, 2021, the first day of the second fiscal quarter of Fiscal Year 2021-2022), expand Ordinance Number 5371's conditional waiver of penalties and interest for cultivation activities in the second and third quarters of Fiscal Year 2021-22 to include the fourth quarter of Fiscal Year 2021-22, and extend that conditional waiver from July 1, 2022 to January 1, 2023. Finally, this ordinance will allow the Board to respond to market fluctuations more quickly in the future by authorizing the Board to waive penalties and interest, conditionally or unconditionally, by resolution.

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 tax any commercial cannabis activity 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. Subsection (B) of Section 7.100.050 of the Monterey County Code is amended to read as follows:

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-three~~ dollars (~~\$7.00~~\$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 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.

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

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-two~~ dollars (~~\$3.00~~\$2.00) 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.

SECTION 4. Section 7.100.100 of the Monterey County Code is amended to read as follows:

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 ten (10) percent 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 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 ten (10) percent of the amount of the

tax, plus interest at the rate of one and one-half percent 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 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.

C. The Board of Supervisors by resolution may direct the Treasurer-Tax Collector to retroactively and/or prospectively waive penalties and interest on commercial cannabis business taxes that would otherwise accrue for some or all persons, conditionally or unconditionally, on whatever terms and for whatever duration the Board so directs provided such direction corresponds with established quarterly reporting periods within the fiscal year.

SECTION 5. Conditional 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, third, and fourth quarters of Fiscal Year 2021-2022.

B. The second, third, and fourth quarter installments of the annual commercial cannabis business tax and cultivation must be received by the Treasurer-Tax Collector on or before January 31, 2023 to be eligible for waiver of penalties and interest.

C. Penalties and interest will be reinstated on any installments not received on or before January 31, 2023.

D. Cannabis businesses conducting cultivation activities may pay quarterly installments at any time during the Treasurer-Tax Collector's business hours prior to January 31, 2023.

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 October 1, 2021, the first day of the second fiscal quarter of Fiscal Year 2021-2022.

PASSED AND ADOPTED this ____ day of August 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