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 FOR CULTIVATION ACTIVITIES

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to lower commercial cannabis business tax rates for cultivation activities retroactive to January 1, 2023. The ordinance establishes the following tax rates: for indoor cultivation, the tax rate is $2.13 per fiscal year per square foot of authorized canopy; for mixed light cultivation, the tax rate is $1.46 per fiscal year per square foot of authorized canopy; for outdoor cultivation, the tax rate is $0.71 per fiscal year per square foot of authorized canopy; and for nursery cultivation, the tax rate is $0.71 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.

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 ("Board") 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 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 adopted Ordinance Number 5305, which amended Monterey County Code ("MCC") 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 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 adopted Ordinance Number 5330, which amended MCC 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 adopted Ordinance Number 5349, which amended MCC 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 adopted Ordinance Number 5355, which amended MCC Chapter 7.100, to establish the County's commercial cannabis business tax rate for outdoor

cannabis cultivation.

J. On March 1, 2022, the Board adopted Ordinance Number 5371, which amended MCC 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. On September 13, 2022, the Board adopted Ordinance Number 5384, which amended MCC Chapter 7.100, to reduce the commercial cannabis business tax rates for mixed-light and indoor cultivation retroactive to October 1, 2022, authorize the Board to, by resolution, waive and/or stay interest and penalties for cannabis operators with delinquent cannabis business taxes, extend the Board's conditional waiver of penalties and interest for FY 21-22 Quarters 2, and 3, from July 31, 2022 to January 31, 2023, and add FY 21-22 Quarter 4 to that conditional waiver.

L. On December 6, 2022, the Board adopted an ordinance, which amended MCC Chapter 7.100, to reduce the tax rate imposed upon manufacturers of commercial cannabis from 3.5% of gross receipts per fiscal year to 1.5% of gross receipts per year.

M. The Board directed preparation of this ordinance after evaluating information concerning commercial cannabis cultivation tax rates; a high volume of cannabis related business closures; declining employment opportunities within the cannabis industry; and an apparent market correction in the licensed cannabis industry that is evidenced by California Cannabis Authority data from August 2021 through October 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.

N. Based on these factors, the Board directed the preparation of this ordinance to reduce commercial cannabis business tax rates for cultivation activities (for those described in amended MCC Section 7.100.050, herein, those rates shall be retroactive to January 1, 2023, the first day of the third fiscal quarter of Fiscal Year 2022-2023).

O. The Board 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 two dollars and thirteen cents ($2.13) 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 one dollar and forty-six cents ($1.46) 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. Subsection (D) of Section 7.100.050 of the Monterey County Code is amended to read as follows:

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 seventy-one cents ($0.71) 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 5. Subsection (E) of Section 7.100.050 of the Monterey County Code is amended to read as follows:

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 seventy-one cents ($0.71) 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.

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. When effective, the reductions to tax rates governed by Section 7.100.050 of the Monterey County Code shall be retroactive to January 1, 2023, the first day of the third fiscal quarter of Fiscal Year 2022-2023.

PASSED AND ADOPTED this ____ day of February 2023, by the following vote:

AYES:
NOES:
ABSENT:

Luis A. Alejo, Chair,
Monterey County Board of Supervisors

ATTEST:

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

KELLY L. DONLON
Assistant County Counsel