

Attachment A

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AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, TEMPORARILY PROHIBITING MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE OR COOPERATIVE CULTIVATION OF MEDICAL MARIJUANA, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF REGULATIONS.

County Counsel Summary

This interim ordinance is an urgency measure pursuant to Government Code section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of Monterey County. This ordinance finds that there is a current and immediate threat to the public health, safety and welfare associated with the collective cultivation, processing, and dispensing of medical marijuana in the absence of specific County land use regulation and that the temporary ban on new medical marijuana dispensaries and collective and cooperative cultivation is necessary to enable the County to study and develop appropriate land use regulations for medical marijuana consistent with state law. This ordinance is an interim urgency ordinance that requires a four-fifths vote of the Board of Supervisors for adoption. The ordinance would take effect immediately and would expire 45 days after its adoption unless extended by subsequent action of the Board of Supervisors.

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

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey ("County") 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 Government Code section 65858, to protect the public safety, health, and welfare, the County may as an urgency measure adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time.

C. County's zoning ordinances, Title 20 and Title 21 of the Monterey County Code, currently do not specifically regulate the use of land or structures for cultivation, processing, or dispensing of medical marijuana. Current County zoning regulations related to indoor and outdoor cultivation of crops and to pharmacies do not adequately address the unique legal, land use, and public health, safety and welfare issues and impacts associated with medical marijuana.

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

E. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana 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 marijuana.

F. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (codified at 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 marijuana 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 marijuana for medical purposes where that medical use has been recommended by a physician.

G. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Saf. 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. Pursuant to Health and Safety Code section 11362.77(a), a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient. In addition, they may also maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

H. 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 facilities that distribute medical marijuana. The MMP allows cities and counties to adopt local ordinances that regulate the location, operation, or establishment of medical marijuana cooperatives or collectives and to enforce such ordinances. (Health & Saf. Code § 11362.83.)

I. Study of potential land use regulations is urgently needed because the County has received inquiries from collectives and cooperatives that seek to open medical marijuana dispensaries and cultivation facilities within the unincorporated areas of Monterey County, notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such facilities.

J. Without sufficient regulations, standards, procedures and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from the establishment of medical marijuana dispensaries and collective or cooperative cultivation facilities, including but not limited to the following harmful impacts from unregulated dispensaries and collective cultivation:

1. Marijuana dispensaries. Facilities that dispense medical marijuana have been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. The effects are due to such factors as the potential for illegal activity, the presence of large quantities of marijuana and cash at the dispensaries, the presence of weapons, and other factors. Numerous counties and cities have

reported harmful effects at dispensaries and surrounding areas, which include an increase in burglaries, robberies, assaults, illegal sale of drugs, possession of marijuana by unauthorized persons, loitering, smoking marijuana in public places, driving while under the influence of marijuana, decreased property values, and increased traffic. A temporary ban on medical marijuana dispensaries is necessary while County gathers data on the specific impacts of introducing medical marijuana dispensaries within the County and considers the enactment of land use regulations to appropriately address such impacts.

2. Cultivation. Collective or cooperative cultivation of medical marijuana has also been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. Harmful effects at both outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire danger from grow light systems, extensive energy consumption, and strong offensive odors. A temporary ban on collective or cooperative cultivation of medical marijuana is necessary while the County gathers County-specific data on the specific potential safety threats and environmental impacts associated with large scale cultivation and develops regulations that address these impacts of cultivation. Specific concerns include threats to public safety and law enforcement demands resulting from the high monetary value of the crop and significant impacts to the environment, as evidenced for example by the following:

a. The United States Drug Enforcement Administration reports that each marijuana plant under various planting conditions may yield an average of 236 grams, or about one-half pound, to 846 grams, or nearly two pounds in its lifetime. The “street value” of a single cannabis plant is substantial. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach \$2,000 to \$5,000, and far greater amounts in other states. Thus, a single marijuana plant can yield \$4,000 or more in salable marijuana.

b. According to a recent study of marijuana cultivation in Northern California by staff of California Department of Fish and Wildlife and National Marine Fisheries Services and academic researchers, water demand for marijuana cultivation has the potential to divert excessive portions of streamflow in the studied watersheds, and this diversion is in turn likely to have harmful impacts on state and federally listed salmon and steelhead trout. (*Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds*, (PLoS (Public Library of Science), published online March 18, 2015.) The water demand associated with cultivation and its biological impacts are of particular concern in the County which has known water supply constraints, documented aquifer overdraft, and state and federally listed species that could be affected by such water use.

K. As a result of the above factors, a temporary ban on new medical marijuana dispensaries and new collective or cooperative cultivation of medical marijuana is necessary to enable the County study, develop, and consider regulations to protect County residents from these threats to public health, safety and welfare associated with the cultivation, processing, and dispensing of marijuana, in advance of permitting new medical marijuana dispensaries or

allowing collective or cooperative cultivation. It is the intent of this interim ordinance to enact a ban that is only temporary in order to provide time for the County to study and develop appropriate regulations for medical marijuana consistent with the Compassionate Use Act and the Medical Marijuana Program Act.

L. Pursuant to Government Code section 65858, this urgency interim ordinance may have duration of no more than 45 days and may be extended only twice, following notice and public hearing, once by 10 months and 15 days, and subsequently by one year. It is the County's intent that this interim ordinance shall be of no further force and effect after 45 days, unless the Board of Supervisors, following a noticed public hearing, elects to extend the Interim Ordinance pursuant to law.

M. The adoption of this interim ordinance is statutorily exempt from the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

SECTION 2. APPLICABILITY

This interim ordinance applies in the coastal and non-coastal unincorporated areas of the County and applies in all zoning districts.

SECTION 3. DEFINITIONS

For purposes of this interim ordinance, the following terms have the definitions set forth below:

A. **Collective or cooperative cultivation.** "Collective or cooperative cultivation" means cultivation by or on behalf of more than one qualified patient, person with an identification card, or a primary caregiver that associate collectively or cooperatively to cultivate marijuana for medical purposes, as referenced in Health and Safety Code section 11362.775.

B. **Cultivation.** "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

C. **Medical marijuana dispensary.** "Medical marijuana dispensary" means any facility or location which is used to make available and/or distribute marijuana for medical purposes to more than one primary caregiver, qualified patient, or patient with an identification card. "Medical marijuana dispensary" includes undertakings that are organized or operated as a collective or cooperative. The term "medical marijuana dispensary" does not include a licensed facility described in Health and Safety Code section 11362.7(d)(1).

D. **Identification card.** "Identification card" means a document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

E. **Person with an identification card.** “Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card.

F. **Primary caregiver.** “Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

G. **Qualified patient.** “Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card issued pursuant to Health and Safety Code sections 11362.7 *et seq.*

SECTION 4. REGULATIONS

A. **Prohibition on collective or cooperative cultivation:** The collective or cooperative cultivation of medical marijuana is prohibited. The County shall not permit or allow, or process applications for land use entitlements for, the use of real property for collective or cooperative cultivation of marijuana for medical purposes.

B. **Prohibition on medical marijuana dispensaries:** Medical marijuana dispensaries are prohibited. The County shall not permit or allow, or process land use entitlements for, the use of real property for a medical marijuana dispensary.

C. These regulations apply during the term of this interim ordinance and any duly adopted extension of this interim ordinance, unless a specific exemption under this ordinance is applicable.

SECTION 5. EXEMPTIONS

A. This interim ordinance does not prohibit a qualified patient, a patient with an identification card, or a primary caregiver from cultivating up to six mature plants or twelve immature marijuana plants per qualified patient, or a greater number if recommended by a doctor consistent with the patient’s needs, within the limits set forth in Health and Safety Code section 11362.77, if the qualified patient or patient with an identification card is cultivating plants only for his or her own personal use, or if the primary caregiver is cultivating plants only for persons for whom he or she personally serves as a primary caregiver and not engaging in collective or cooperative cultivation.

B. This interim ordinance does not prohibit medical marijuana cultivation if the property owner demonstrates to the satisfaction of the Director of Planning that such cultivation had commenced and all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of this initial interim ordinance.

C. This interim ordinance does not prohibit the operation of any medical marijuana dispensary if the property owner demonstrates to the satisfaction of the Director of Planning that such use had commenced and all required County approvals and land use permits had been obtained prior to the date of the adoption of this initial interim ordinance.

SECTION 6. ENFORCEMENT

Any violation of this interim ordinance is unlawful and a public nuisance. In the event of a violation of this ordinance, the County may, in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and such other enforcement action as is authorized by law.

SECTION 7. NO TAKING OF PROPERTY INTENDED

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed use of land would effect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

SECTION 8. SEVERABILITY

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

SECTION 9. EFFECTIVE DATE

In light of the recitals in this ordinance, the Board declares that this interim ordinance is necessary as an urgency measure for preserving the public health, safety, and welfare. This interim ordinance shall take effect immediately upon adoption for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED this ____ day of _____, 2015, by the following vote:

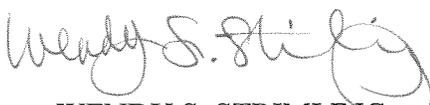
- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Simón Salinas
Chair, Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING Senior Deputy County Counsel