

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 7.100 OF THE MONTEREY COUNTY CODE TO SET A TAX RATE FOR OUTDOOR COMMERCIAL CANNABIS CULTIVATION

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to establish the County's commercial cannabis business tax rate for outdoor cannabis cultivation. The ordinance establishes an outdoor cultivation tax rate of \$2.50 per fiscal year per square foot of authorized canopy effective July 1, 2021, to increase by \$0.25 per fiscal year until a maximum rate of \$5.00 per square foot is reached, and to increase thereafter based on the Consumer Price Index. This ordinance does not preclude the County from adoption of an ordinance in the future to reinstate the maximum tax rates for cultivation 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 Declarations.

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 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 ("MCC")). On July 19, 2016, the Board of Supervisors adopted regulations establishing criteria for issuing local business permits (Ordinance Numbers 5280 and 5293, codified at MCC Chapters 7.02 and 7.90). 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 California Elections Code section 15372.

D. On November 8, 2016, the voters approved the commercial cannabis business tax (Measure Y, codified at MCC 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 MCC Chapter 7.100 to reduce the commercial cannabis tax rates and modify the automatic increases on the commercial cannabis tax rates.

F. On June 18, 2019, the Board of Supervisors adopted Ordinance Numbers 5311 and 5312 to add Chapters 20.69 and 21.69 to the MCC to establish a five year pilot program for outdoor commercial cultivation and related activities in certain coastal and inland unincorporated areas. Ordinance No. 5312 was certified by the Coastal Commission on September 27, 2019.

G. On May 19, 2020, the Board of Supervisors adopted Ordinance Number 5330, which amended MCC Chapter 7.100 to suspend the 2020-2021 Fiscal Year automatic increases on the commercial cannabis tax rates.

H. On October 22, 2019, the Board of Supervisors gave direction to staff to return with an ordinance amending Chapter 7.100 of the MCC to set the outdoor grow pilot program cannabis tax rate at \$2.50 with an escalator of \$0.25 cents per year.

I. On May 18, 2021, the Board of Supervisors adopted Ordinance Numbers 5336 and 5337, which amended Chapters 20.69 and 21.69 of the MCC to extend the outdoor cultivation pilot program and made other modifications to increase participation. The County needs to submit Ordinance Number 5337 to the Coastal Commission for certification.

J. On May 25, 2021, the Board of Supervisors adopted Ordinance Number 5335, which amended MCC Chapter 7.100 to suspend the 2021-2022 Fiscal Year automatic increases on the commercial cannabis tax rates.

K. This ordinance sets a tax rate for outdoor cultivation below the cultivation rate approved by the voters. The Monterey County Board of Supervisors reserves its right to later restore higher tax rates up to the maximum amounts approved by the voters in Measure Y, 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. Section 7.100.040 of the Monterey County Code is amended to read as follows:

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” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

C. “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

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 cannabis permit issued pursuant to Chapter 7.90 of the Monterey County Code.

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. “Immature plant” or “immature” means a cannabis plant that is not flowering.

S. “Indoor cultivation” means the cultivation of cannabis, except nurseries, using exclusively artificial lighting.

T. “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.

U. “Mature plant” or “mature” means a cannabis plant that is flowering.

V. “Mixed light cultivation” means the cultivation of cannabis, except nurseries, using a combination of natural and supplemental artificial lighting.

W. “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.

X. “Outdoor Cultivation” means cultivation of cannabis, except nurseries, without

the use of artificial lighting or light deprivation in the canopy area at any point in time.

YX. “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.

ZY. “Retailer” and “retail facility” shall have the same meaning as “Dispensary.”

AAZ. “Sale” means and includes any sale, exchange, or barter.

AABB. “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.

CCBB. “State” means the State of California.

DDCC. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.* or other applicable state law.

EEDD. “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. Licensed by the California Bureau of Cannabis Control.

FFEE. “Transport” means the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to the California Business & Professions Code Sections 26000, *et seq.*

GGFF. “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.

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. Tax on indoor commercial cannabis cultivation except nurseries.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2022 for commercial cannabis indoor cultivation, excluding nurseries, shall be set at eight dollars (\$8.00) 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.

2. Beginning on July 1, 2022, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized canopy, not to exceed a rate of fifteen dollars (\$15.00) per square foot. Beginning on July 1, 2028 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 mixed light commercial cannabis cultivation except nurseries.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2022 for commercial cannabis mixed light cultivation, excluding nurseries, shall be set at five dollars (\$5.00) 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.

2. Beginning on July 1, 2022, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized canopy, not to exceed a rate of fifteen dollars (\$15.00) per square foot. Beginning on July 1, 2031 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 outdoor commercial cannabis cultivation except nurseries.

1. 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 initial tax rate effective July 1, 2021 through June 30, 2022 for commercial cannabis outdoor cultivation, excluding nurseries, shall be set at two dollars fifty cents (\$2.50) 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.

2. Beginning on July 1, 2022, such tax rate shall automatically increase each fiscal year by twenty-five cents (\$0.25) per square foot of authorized canopy, not to exceed a rate of five dollars (\$5.00) per square foot. Beginning on July 1, 2032 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.

ED. Tax on commercial cultivation of cannabis as a nursery.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2022 shall be set at 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.

2. Beginning on July 1, 2022, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized 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, 2026 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.

FE. Tax on commercial cannabis manufacturers.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at two and one-half percent (2.5%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one percent (1%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Years 2020-2022. The annual one percent (1%) increase shall resume in Fiscal Year 2022-2023 on July 1, 2022.

GF. Tax on commercial cannabis distributors or distribution facilities.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at two percent (2%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one percent (1%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Years 2020-2022. The annual one percent (1%) increase shall resume in Fiscal Year 2022-2023 on July 1, 2022.

HG. 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 effective July 1, 2018 shall be set at one percent (1%) of the gross receipts per fiscal year.

IH. Tax on commercial cannabis dispensaries.

1. 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 initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at four percent (4%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one-half percent (0.5%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Years 2020-2022. The annual one-half percent (0.5%) increase shall resume in Fiscal Year 2022-2023 on July 1, 2022.

SECTION 4. 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 5. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of July 2021, by the following vote:

AYES:

NOES:

ABSENT:

Wendy Root Askew, 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
Deputy County Counsel