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**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No. 21-010

Outdoor Cannabis Cultivation Pilot Program and Indoor Cannabis Cultivation Renewable Energy Requirement Revisions

Resolution of the Monterey County Planning Commission recommending that the Monterey County Board of Supervisors:

- a) Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA the pursuant to Business and Professions Code section 26055(h).
- b) Revise the ordinance (**Attachment 1**) to remove the Central Salinas Valley area, and adopt the ordinance, as revised, to amend Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 21.69 (the Outdoor Cannabis Cultivation Pilot Program) to:
 - 1) Add grazing land zoning districts within the Cachagua Area Plan as locations where outdoor cannabis cultivation may be permitted;
 - 2) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
 - 3) Modify the criteria for granting and exception to the setback from the nearest off-site structure;
 - 4) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
 - 5) Extend the pilot program from 5 years to 8 years.
- c) Adopt an ordinance (**Attachment 2**) to amend Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
 - 1) Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
 - 2) Modify the criteria for granting and exception to the setback from the nearest off-site structure;
 - 3) Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
 - 4) Extend the pilot program from 5 years to 8 years.
- d) Direct staff to annually review the outdoor cannabis cultivation pilot program to include consideration of revisions to the program until 100 permits are approved.

The proposed ordinances amending regulations for commercial cannabis cultivation came before the Planning Commission at a duly noticed public hearing on March 31, 2021 and April 28, 2021. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

I. RECITALS

1. 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.

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

3. In recent years, the federal government has taken a hands-off approach with regard to states and local governments that have enacted laws authorizing cannabis related conduct, as long as the states and local governments have established strong and effective regulatory and enforcement systems that address the threats that cannabis activity could pose to public safety, public health, and other law enforcement interests.

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

5. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety 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.

6. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code §§ 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.

7. On July 12, 2016, the Monterey County Board of Supervisors (“Board of Supervisors”) adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance No. 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code (“MCC”)), and on July 19, 2016 the Board of Supervisors adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance No. 5272, codified at MCC Chapter 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to Section 15372 of the California Elections Code. On November 8, 2016,

the voters approved the tax (Measure Y, codified at MCC Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code and Ordinance Nos. 5270 and 5272 became operative. Hence, Chapter 21.67 became operative in the inland unincorporated area on December 13, 2016. Chapter 21.67 only allowed for medical commercial cannabis activities within greenhouses and indoor facilities legally established as of January 1, 2016.

8. Also on July 12, 2016, the Board of Supervisors adopted a resolution of intent (Resolution No. 16-210) to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. The County submitted the regulations to the California Coastal Commission for certification, but the County subsequently withdrew the proposed regulations because of discussions with Coastal Commission staff on revisions and changes to state law.

9. On November 8, 2016, by statewide initiative, the voters enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.

10. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code §§ 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single State licensing scheme for both medicinal and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities. The state will not issue a state license without first receiving authorization from the applicable local jurisdiction.

11. On December 5, 2017, the Board of Supervisors adopted Ordinance No. 5292 to amend Title 21 of the MCC to regulate both adult-use and medical commercial cannabis activities, and Resolution of Intent No. 17-015 to adopt an ordinance amending the Monterey County Coastal Implementation Plan (Title 20) of the MCC to regulate commercial cannabis activities in the coastal zone. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1. On March 20, 2018, the Board of Supervisors adopted the coastal zoning regulations, as certified by the Coastal Commission (Ordinance No. 5299). Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

12. On February 7, 2018, the California Coastal Commission certified the Monterey County Local Coastal Program Amendments (LCP-3-MCO-18-0004-1) amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with state law and to amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site notwithstanding the coastal-dependent industrial land use designation at the site.

13. On March 20, 2018, the Monterey County Board of Supervisors adopted:

a. The California Coastal Commission certified ordinance amending the Monterey County Coastal Implementation Plan, Part 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code (Ordinance Number 5299);

b. A resolution amending the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site notwithstanding the coastal-dependent industrial land use designation at the site (Resolution 18-071);

c. An ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to remove the 600-foot setback from public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities (Ordinance Number 5300); and

d. Adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 600-foot setback from public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities (Resolution of Intent Number 18-070).

14. On November 6, 2018, the Board of Supervisors adopted Ordinance No. 5306 to amend Title 21 of the Monterey County Code to change commercial cannabis activities from a conditional use allowed subject to a Use Permit, to a principle use allowed subject to an Administrative Permit and to create an exception to 1,500 foot setback required between commercial cannabis retailers when special circumstances apply. On that same day, the Board of Supervisors adopted Resolution of Intent No. 18-413 to amend the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit, to a principle use allowed subject to a Coastal Administrative Permit and to create an exception to 1,500 foot setback required between commercial cannabis retailers when special circumstances apply. Resolution of Intent No. 18-413 incorporated changes intended for adoption as codified in Resolution of Intent No. 18-070 relating to setbacks required from schools, playgrounds, child care centers, and youth centers for all types of commercial cannabis activities. The Resolution of Intent (No. 18-413) was certified by the Coastal Commission on September 27, 2019. The ordinance must return to the Board of Supervisors for adoption.

15. On June 18, 2019, the Board of Supervisors adopted Ordinance Nos. 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code 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.

16. The purpose of these ordinances are to:

a. Modify the regulations (coastal and non-coastal) for indoor cultivation to require onsite renewable energy generation to the maximum extent feasible with the

purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources; and

b. Modify the regulations for outdoor cannabis cultivation in the coastal and non-coastal unincorporated areas of Monterey County to remove some constraints to entry in the program.

17. In forwarding this recommendation to the Board of Supervisors, the Planning Commission has weighed the need for further study of the compatibility, or lack thereof, of cannabis with other forms of agricultural in the agricultural intensive areas of the County like the Central Salinas Valley along with the timelines and priorities for other modifications to cannabis regulations including the pending expiration of the CEQA exemption on July 1, 2021. The Planning Commission recommends proceeding with consideration of the ordinances to remove some barriers to entry in the cannabis cultivation industry now with continued study of the potential for cannabis cultivation in all areas of the unincorporated Monterey County in the immediate future.

18. It is the intent of Monterey County to establish regulations that reduce negative impacts on the community and environment from outdoor cannabis cultivation and outdoor cultivation ancillary uses and to provide for protection of public health, safety and welfare.

19. For the proposed amendments to the Coastal Implementation Plan, pursuant to the Coastal Act, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: the County's Planning Commission hold a noticed public hearing and make a recommendation to the Board of Supervisors; the Board of Supervisors hold a noticed public hearing, adopt an ordinance, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending Part 1 of the Coastal Implementation Plan will not go into effect until after certification by the Coastal Commission and it will not become operative until the Coastal Commission's certification is final and effective.

20. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.

21. State law provides a statutory exemption from the California Environmental Quality Act (CEQA) for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits which are themselves subject to CEQA review [Business and Professions Code section 26055(h)]. The County's draft ordinances require an Administrative Permit or Coastal Administrative Permit, for all commercial cannabis activities covered in the pilot program. Administrative Permits and Coastal Administrative Permits are individually subject to CEQA review. Therefore, the County's ordinances are statutorily exempt from CEQA review pursuant to Business and Professions Code section 26055(h).

22. State law requires the Planning Commission to hold a noticed public hearing on proposed amendments to zoning ordinances and to make a written recommendation to the Board of Supervisors.

23. On March 31, 2020, the Planning Commission held a duly noticed public hearing to consider making a recommendation to the Board of Supervisors on the proposed ordinances (Attachments 1 and 2). At the conclusion of the hearing, the Planning Commission continued the matter to April 28, 2021 with direction to staff to schedule the matter for a review and recommendation by the Agricultural Advisory Committee (AAC) on April 22, 2021. The Planning Commission considered the ordinance and the recommendation of the AAC at the continued hearing on April 28, 2021. At least 10 days before the hearing on March 31, 2021, notices of the hearing before the Planning Commission were published in The Monterey County Weekly.

II. DECISION

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors:

- a) Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA pursuant to Business and Professions Code section 26055(h).
- b) Revise the ordinance (**Attachment 1**) to remove the Central Salinas Valley area, and adopt the ordinance, as revised, to amend Chapter 21.67 of Title 21 (non-coastal zoning) of the Monterey County Code to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 21.69 (the Outdoor Cannabis Cultivation Pilot Program) to:
 - a. Add grazing land zoning districts within the Cachagua Area Plan as locations where outdoor cannabis cultivation may be permitted;
 - b. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
 - c. Modify the criteria for granting and exception to the setback from the nearest off-site structure;
 - d. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
 - e. Extend the pilot program from 5 years to 8 years.
- c) Adopt an ordinance (**Attachment 2**) to amend Chapter 20.67 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) to modify renewable energy requirements for indoor cannabis cultivation, and to amend Chapter 20.69 of Title 20 (Outdoor Cannabis Cultivation Pilot Program) to:
 - a. Reduce the setback required from the nearest off-site structure from 500 feet to 250 feet;
 - b. Modify the criteria for granting and exception to the setback from the nearest off-site structure;
 - c. Increase the maximum allowable canopy from 10,000 square feet to 20,000 square feet; and
 - d. Extend the pilot program from 5 years to 8 years; and
- d) Direct staff to annually review the outdoor cannabis cultivation pilot program to include consideration of revisions to the program until 100 permits are approved.

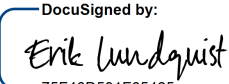
PASSED AND ADOPTED on this 28th day of April, 2021, by the following vote:

AYES: Diehl, Monsalve, Getzelman, Daniels, Mendoza

NOES: Roberts

ABSENT: Coffelt, Gonzales, Ambriz

ABSTAIN: Duflock

By: 
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Erik Lundquist, AICP, Planning Commission Secretary

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTERS 21.67 AND 21.69 OF TITLE 21 (NON-COASTAL ZONING)
OF THE MONTEREY COUNTY CODE TO EXPAND THE OUTDOOR
COMMERCIAL CANNABIS CULTIVATION PILOT PROGRAM AND MODIFY
RENEWABLE ENERGY REQUIREMENTS FOR INDOOR CULTIVATION**

County Counsel Summary

This ordinance amends Chapter 21.67 of Title 21 of the Monterey County Code to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. This ordinance repeals the requirement for onsite renewable energy generation offsetting at least 50% of the projected energy demand. This ordinance also amends Chapter 21.69 of Title 21 (non-coastal zoning) of the Monterey County Code to broaden the outdoor cultivation pilot program by adding the Central Salinas Valley Area Plan (in addition to Cachagua Area and Carmel Valley Master Plan areas), and allowing outdoor cannabis cultivation within grazing land zoning districts contained within the Central Salinas Valley Area and the Cachagua Area. The ordinance also extends the pilot program duration from 5 years to 8 years. The ordinance reduces the setback required between a cannabis cultivation site and the nearest offsite structure from 500 feet to 250 feet. Finally, this ordinance increases the maximum allowable canopy for outdoor cultivation from 10,000 square feet to 20,000 square feet.

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

C. The federal government issued guidelines for states and local governments that have enacted laws authorizing commercial cannabis that highlight the importance of implementing strong and effective regulatory and enforcement systems that will address the threat that cannabis activity could pose to public safety, public health, and other law enforcement interests.

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

E. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

F. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code §§ 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.

G. On July 12, 2016, the Monterey County Board of Supervisors (“Board of Supervisors”) adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance No. 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code (“MCC”)), and on July 19, 2016 the Board of Supervisors adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance No. 5272, codified at MCC Chapter 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to Section 15372 of the California Elections Code. On November 8, 2016, the voters approved the tax (Measure Y, codified at MCC Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code and Ordinance Nos. 5270 and 5272 became operative. Hence, Chapter 21.67 became operative in the inland unincorporated area on December 13, 2016. Chapter 21.67 only allowed for medical commercial cannabis activities within greenhouses and indoor facilities legally established as of January 1, 2016.

H. Also on July 12, 2016, the Board of Supervisors adopted a resolution of intent (Resolution No. 16-210) to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. The County submitted the regulations to the California Coastal Commission for certification, but the County subsequently withdrew the proposed regulations because of discussions with Coastal Commission staff on revisions and changes to state law.

I. On November 8, 2016, by statewide initiative, the voters enacted the Adult Use of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.

J. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code §§ 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single state licensing scheme for both medicinal

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and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities.

K. On December 5, 2017, the Board of Supervisors adopted Ordinance No. 5292 to amend Title 21 of the MCC to regulate both adult-use and medical commercial cannabis activities, and Resolution of Intent No. 17-015 to adopt an ordinance amending the Monterey County Coastal Implementation Plan (Title 20) of the MCC to regulate commercial cannabis activities in the coastal zone. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1. On March 20, 2018, the Board of Supervisors adopted the coastal zoning regulations, as certified by the Coastal Commission (Ordinance No. 5299). Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

L. On November 6, 2018, the Board of Supervisors adopted Ordinance No. 5306 to amend Title 21 of the MCC to change commercial cannabis activities from a conditional use allowed subject to a Use Permit, to a principle use allowed subject to an Administrative Permit. On that same day, the Board of Supervisors adopted Resolution of Intent No. 18-413 to amend the Monterey County Coastal Implementation Plan (Title 20) to change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit, to a principle use allowed subject to a Coastal Administrative Permit. The Resolution of Intent (No. 18-413) was certified by the Coastal Commission on September 27, 2019. The ordinance must return to the Board of Supervisors for adoption.

M. On June 18, 2019, the Board of Supervisors adopted Ordinance Nos. 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code 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.

N. The purpose of this ordinance is two make two amendments. First, to modify the regulations for indoor cultivation to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. Second, to modify the regulations for outdoor cannabis cultivation in the inland unincorporated areas of Monterey County to remove some constraints to entry in the program. The Board of Supervisors is acting on a separate similar ordinance applicable to the coastal unincorporated area.

O. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice, and that comply with state law and federal guidelines.

P. In addition to this ordinance, commercial cannabis activities are subject to Chapters 7.02 and 7.90 of the MCC, which require a Business License and a Commercial Cannabis Business Permit respectively. Together these regulations establish an effective regulatory and enforcement system.

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Q. This ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Business and Professions Code section 26055(h), which provides a statutory exemption from CEQA where, prior to July 1, 2021, the local agency adopts an ordinance that requires discretionary review of permits, including applicable environmental review under CEQA, to engage in commercial cannabis activity.

SECTION 2. Subsection B.9 of Section 21.67.050 of the Monterey County Code is amended to read as follows:

9. Electrical power for indoor cultivation using artificial lighting only shall be provided by one of the following methods:

a. Onsite renewable generation designed to offset anticipated energy demand to the maximum extent feasible and purchase of carbon offsets of any portion of power not provided from onsite renewable sources; or

b. Ongoing participation in a rate program offered by the electric utility provider that provides energy from one hundred percent (100%) renewable source. Examples of such programs include the Central Coast Community Energy 3CPrime program, and Pacific Gas and Electric Company’s Solar Choice or Regional Renewable Choice programs.

SECTION 3. Section 21.69.020 of the Monterey County Code is amended to read as follows:

The purpose of this Chapter is to achieve the following:

A. To establish a pilot program to provide uniform procedures for consideration of permits for outdoor cultivation and outdoor cultivation ancillary uses in the Carmel Valley Master Plan, Cachagua Area Plan, and Central Salinas Valley Area Plan areas;

B. To gather data and information related to outdoor cultivation and outdoor cultivation ancillary uses to enable the County to evaluate the establishment of long-term regulations;

C. To provide those who historically cultivated cannabis within the Carmel Valley Master Plan, Cachagua Area, and Central Salinas Valley Area Plan areas an opportunity to participate in the legalized commercial cannabis industry;

D. To reduce negative impacts to the environment; and

E. To provide for protection of public health, safety and welfare of residents, visitors, and persons engaged in outdoor cultivation and outdoor cultivation ancillary uses under this pilot program.

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SECTION 4. Section 21.69.030 of the Monterey County Code is amended to read as follows:

A. Notwithstanding the provisions of Chapter 21.67 of this Title, the provisions of this Chapter are applicable to outdoor cultivation and outdoor cultivation ancillary uses within the Carmel Valley Master Plan, the Cachagua Area Plan, and the Central Salinas Valley Area Plan. Chapter 21.67 shall apply to all other commercial cannabis activities not covered in this Chapter.

B. The duration of the pilot program shall be June 18, 2026, eight (8) years from the effective date of the ordinance enacting this Chapter.

SECTION 5. Section 21.69.050 of the Monterey County Code is amended to read as follows:

A. Only qualified properties shall be eligible for permitting under this Chapter.

B. Qualified properties are required to provide evidence to the satisfaction of the Appropriate Authority that all of the following criteria are met:

1. The cannabis site is located within the Carmel Valley Master Plan area, the Cachagua Area Plan area, or the Central Salinas Valley Area Plan area.

2. The cannabis site is within an area designated on the Sectional District Zoning Map as:

- a. Rural Density Residential in the Carmel Valley Master Plan;
- b. Resource Conservation or Permanent Grazing in the Cachagua Area Plan; or
- c. Permanent Grazing in the Central Salinas Valley Area Plan.

3. The cannabis site is located on a lot where proof of prior cultivation is demonstrated per Subsection C of this Section.

C. Qualified properties are required to provide evidence to the satisfaction of the appropriate authority that they were engaged in medicinal cannabis cultivation on the lot prior to January 1, 2016. For the purposes of this Subsection, cultivation of six (6) or fewer plants shall not be sufficient evidence of prior cultivation. Such evidence shall include at least two of the following:

1. Photographs of cultivation that existed on the lot prior to January 1, 2016, including aerial views from Google Earth, Big Maps, Terraserver, or a comparable service showing both the entire lot and the cultivation site in more detail. The date these images were captured shall be noted.

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2. Documentary evidence that medicinal cannabis was cultivated on the lot on behalf of a collective or cooperative dated prior to January 1, 2016.

3. Any other form of evidence acceptable to the appropriate authority that cultivation occurred on the lot prior to January 1, 2016.

D. This pilot program only applies to the specified areas of the Carmel Valley Master Plan, Cachagua Area Plan, and the Central Salinas Valley Area Plan as restricted by this Chapter, and in the Big Sur Land Use Plan as restricted by Chapter 20.69 of the Monterey County Code. The uses permitted under this pilot program are expressly prohibited in all other unincorporated areas of Monterey County.

SECTION 6. Subsection C of Section 21.69.060 of the Monterey County Code is amended to read as follows:

C. Outdoor cultivation and outdoor cultivation ancillary uses shall conform to all of the following minimum setback requirements:

1. The lot on which a cannabis site is located shall not be within one thousand (1,000) feet of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, a playground, or a drug recovery facility that is in existence at the time of approval of a permit by the appropriate authority. The distance specified in this Section shall be measured in a straight line from the nearest point of the property line of the lot that contains the outdoor cultivation and outdoor cultivation ancillary uses, to the nearest point of the property line of the enumerated use(s).

2. The cannabis site shall be setback a minimum of fifty (50) feet from any public road.

3. The cannabis site shall be setback a minimum of two hundred fifty feet (250) feet from the nearest offsite structure. This setback does not apply to non-habitable sheds, outbuildings, and similar non-habitable accessory structures. The distance specified in this Section shall be measured in a straight line from the nearest point of the cannabis site to the nearest applicable structure on adjoining properties.

4. The cannabis site shall be setback a minimum of one hundred fifty (150) feet from a stream, river, or watercourse.

SECTION 7. Subsection D of Section 21.69.060 of the Monterey County Code is amended to read as follows:

D. Exceptions to setbacks from the nearest offsite structure may be considered by the appropriate authority. The following criteria may be used in consideration of such an exception: weather patterns; existence of topographical features; trees and shrubs; and possible development

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of landscape berms to separate cannabis uses from nearby residential uses on a neighboring lot. Setbacks may also be reduced for supportive nursery cannabis sites and for outdoor cultivation ancillary uses, provided that such uses are located entirely within an approved structure that incorporates adequate odor mitigation technologies. In no case shall the setback from a school, playground, youth center, child care center, or drug recovery facility be less than a one thousand (1,000) foot radius. This Subsection does not restrict the ability of the appropriate authority to consider odor mitigation techniques, including but not limited to, landscape vegetation strips which may include other fragrant vegetation to mask the odors, odor neutralizing technologies, or relocation of cannabis sites as part of the consideration of a permit required pursuant to this Chapter.

SECTION 8. Subsection J of Section 21.69.060 of the Monterey County Code is amended to read as follows:

J. The canopy of outdoor cultivation shall be limited to two and one half percent (2.5%) of the total square footage of the lot, not to exceed twenty thousand (20,000) square feet of canopy on any one lot.

SECTION 9. 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 10. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this _____ day of _____ 2021, by the following vote:

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

Chair, Wendy Root Askew
Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board

APPROVED AS TO FORM BY:

Kelly L. Donlon
Deputy County Counsel

ATTACHMENT 1

By: _____
Deputy

ATTACHMENT 2

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTERS 20.67 AND 20.69 OF TITLE 20 (COASTAL ZONING) OF THE MONTEREY COUNTY CODE TO MODIFY THE OUTDOOR COMMERCIAL CANNABIS CULTIVATION PILOT PROGRAM AND CHANGE RENEWABLE ENERGY REQUIREMENTS FOR INDOOR CULTIVATION

County Counsel Summary

This ordinance amends Chapter 20.67 of Title 20 (coastal zoning) of the Monterey County Code to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. This ordinance repeals the requirement for onsite renewable energy generation offsetting at least 50% of the projected energy demand. This ordinance also amends Chapter 20.69 of Title 20 (coastal zoning) of the Monterey County Code to extend the pilot program duration from 5 years to 8 years, reduce the setback required between a cannabis cultivation site and the nearest offsite structure from 500 feet to 250 feet, and to increase the maximum allowable canopy for outdoor cultivation from 10,000 square feet to 20,000 square feet.

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

C. The federal government issued guidelines for states and local governments that have enacted laws authorizing commercial cannabis that highlight the importance of implementing strong and effective regulatory and enforcement systems that will address the threat that cannabis activity could pose to public safety, public health, and other law enforcement interests.

D. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (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 cannabis for medical purposes. One of the stated purposes of

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the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.

E. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.

F. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code §§ 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.

G. On July 12, 2016, the Monterey County Board of Supervisors (“Board of Supervisors”) adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance No. 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code (“MCC”)), and on July 19, 2016 the Board of Supervisors adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance No. 5272, codified at MCC Chapter 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant to Section 15372 of the California Elections Code. On November 8, 2016, the voters approved the tax (Measure Y, codified at MCC Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code and Ordinance Nos. 5270 and 5272 became operative. Hence, Chapter 21.67 became operative in the inland unincorporated area on December 13, 2016. Chapter 21.67 only allowed for medical commercial cannabis activities within greenhouses and indoor facilities legally established as of January 1, 2016.

H. Also on July 12, 2016, the Board of Supervisors adopted a resolution of intent (Resolution No. 16-210) to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. The County submitted the regulations to the California Coastal Commission for certification, but the County subsequently withdrew the proposed regulations because of discussions with Coastal Commission staff on revisions and changes to state law.

I. On November 8, 2016, by statewide initiative, the voters enacted the Adult Use of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.

J. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code §§ 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single state licensing scheme for both medicinal and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities.

K. On December 5, 2017, the Board of Supervisors adopted Ordinance No. 5292 to amend Title 21 of the MCC to regulate both adult-use and medical commercial cannabis

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activities, and Resolution of Intent No. 17-015 to adopt an ordinance amending the Monterey County Coastal Implementation Plan (Title 20) of the MCC to regulate commercial cannabis activities in the coastal zone. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1. On March 20, 2018, the Board of Supervisors adopted the coastal zoning regulations, as certified by the Coastal Commission (Ordinance No. 5299). Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

L. On November 6, 2018, the Board of Supervisors adopted Ordinance No. 5306 to amend Title 21 of the MCC to change commercial cannabis activities from a conditional use allowed subject to a Use Permit, to a principle use allowed subject to an Administrative Permit. On that same day, the Board of Supervisors adopted Resolution of Intent No. 18-413 to amend the Monterey County Coastal Implementation Plan (Title 20) to change commercial cannabis activities from a conditional use allowed subject to a Coastal Development Permit, to a principle use allowed subject to a Coastal Administrative Permit. The Resolution of Intent (No. 18-413) was certified by the Coastal Commission on September 27, 2019. The ordinance must return to the Board of Supervisors for adoption.

M. On June 18, 2019, the Board of Supervisors adopted Ordinance Nos. 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code 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.

N. The purpose of this ordinance is to make two amendments. First, to modify the regulations for indoor cultivation to require onsite renewable energy generation to the maximum extent feasible with the purchase of carbon credits, or to allow participation in a program that ensures energy is provided from 100% renewable energy sources. Second, to modify the regulations for outdoor cannabis cultivation in the coastal unincorporated areas of Monterey County to remove some constraints to entry in the program. The Board of Supervisors is acting on a separate similar ordinance applicable to the inland unincorporated area.

O. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice, and that comply with state law and federal guidelines.

P. In addition to this ordinance, commercial cannabis activities are subject to Chapters 7.02 and 7.90 of the MCC, which require a Business License and a Commercial Cannabis Business Permit respectively. Together these regulations establish an effective regulatory and enforcement system.

Q. This ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Business and Professions Code section 26055(h), which provides a statutory exemption from CEQA where, prior to July 1, 2021, the local agency adopts an

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ordinance that requires discretionary review of permits, including applicable environmental review under CEQA, to engage in commercial cannabis activity.

R. The County intends to carry out the amendments in a manner fully in conformity with the Coastal Act and MAUCRSA.

S. This ordinance amends the Monterey County Coastal Implementation Plan, which is part of the County's Local Coastal Program. Pursuant to the Coastal Act, the County may amend the certified Local Coastal Program provided the County follows certain procedures. The procedures include the following: the County's Planning Commission holds a noticed public hearing and makes a recommendation to the Board of Supervisors on the proposed amendment; the Board of Supervisors holds a noticed public hearing to adopt the ordinance subject to California Coastal Commission certification, and submits the proposed amendment to the Coastal Commission for certification together with materials sufficient for a thorough and complete review; and the Coastal Commission certifies the amendment and confirms the County's action. Accordingly, the ordinance will not go into effect until after the Coastal Commission certifies the amendment and confirms the Board's action.

SECTION 2. Subsection B. 9 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

9. Electrical power for indoor cultivation using artificial lighting only shall be provided by one of the following methods:

a. Onsite renewable generation designed to offset anticipated energy demand to the maximum extent feasible and purchase of carbon offsets of any portion of power not provided from onsite renewable sources; or

b. Ongoing participation in a rate program offered by the electric utility provider that provides energy from one hundred percent (100%) renewable source. Examples of such programs include the Central Coast Community Energy 3CPrime program, and Pacific Gas and Electric Company's Solar Choice or Regional Renewable Choice programs.

SECTION 3. Subsection B of Section 20.69.030 of the Monterey County Code is amended to read as follows:

B. The duration of the pilot program shall be June 18, 2026, eight (8) years from the effective date of the ordinance enacting this Chapter.

SECTION 4. Subsection D of Section 20.69.050 of the Monterey County Code is amended to read as follows:

D. This pilot program only applies to the specified areas of the Big Sur Land Use Plan in the coastal zone as restricted by this Chapter, and in the Carmel Valley Master Plan, Cachagua Area Plan, and Central Salinas Valley Area Plan as restricted by Chapter 21.69 of the

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Monterey County Code. The uses permitted under this pilot program are expressly prohibited in all other unincorporated areas of Monterey County.

SECTION 5. Subsection C of Section 20.69.060 of the Monterey County Code is amended to read as follows:

C. Outdoor cultivation and outdoor cultivation ancillary uses shall conform to all of the following minimum setback requirements:

1. The lot on which a cannabis site is located shall not be within one thousand (1,000) feet of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, a playground, or a drug recovery facility that is in existence at the time of approval of a permit by the appropriate authority. The distance specified in this Section shall be measured in a straight line from the nearest point of the property line of the lot that contains the outdoor cultivation and outdoor cultivation ancillary uses, to the nearest point of the property line of the enumerated use(s).
2. The cannabis site shall be setback a minimum of fifty (50) feet from any public road.
3. The cannabis site shall be setback a minimum of two hundred fifty feet (250) feet from the nearest offsite structure. This setback does not apply to non-habitable sheds, outbuildings, and similar non-habitable accessory structures. The distance specified in this Section shall be measured in a straight line from the nearest point of the cannabis site to the nearest applicable structure on adjoining properties.
4. The cannabis site shall be setback a minimum of one hundred fifty (150) feet from a stream, river, or watercourse.

SECTION 6. Subsection D of Section 21.69.060 of the Monterey County Code is amended to read as follows:

D. Exceptions to setbacks from the nearest offsite structure may be considered by the appropriate authority. The following criteria may be used in consideration of such an exception: weather patterns; existence of topographical features; trees and shrubs; and possible development of landscape berms to separate cannabis uses from nearby residential uses on a neighboring lot. Setbacks may also be reduced for supportive nursery cannabis sites and for outdoor cultivation ancillary uses, provided that such uses are located entirely within an approved structure that incorporates adequate odor mitigation technologies. In no case shall the setback from a school, playground, youth center, child care center, or drug recovery facility be less than a one thousand (1,000) foot radius. This Subsection does not restrict the ability of the appropriate authority to consider odor mitigation techniques, including but not limited to, landscape vegetation strips which may include other fragrant vegetation to mask the odors, odor neutralizing technologies, or relocation of cannabis sites as part of the consideration of a permit required pursuant to this Chapter.

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SECTION 7. Subsection J of Section 20.69.060 of the Monterey County Code is amended to read as follows:

J. The canopy of outdoor cultivation shall be limited to two and one half percent (2.5%) of the total square footage of the lot, not to exceed twenty thousand (20,000) square feet of canopy on any one lot.

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. This Ordinance shall become effective on the thirty-first day following its adoption or upon California Coastal Commission confirmation that County's ordinance satisfies the Coastal Commission's certification order, whichever occurs later.

PASSED AND ADOPTED on this _____ day of _____ 2021, by the following vote:

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

Chair, Wendy Root Askew
Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM BY:

Kelly L. Donlon
Deputy County Counsel

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