

Attachment B

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ORDINANCE NO. _____

AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, EXTENDING AND AMENDING INTERIM ORDINANCE NO. 5254 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 extends Interim Ordinance No. 5254, as previously extended by Interim Ordinance No. 5256, for 12 months, until and through February 26, 2017, as 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 Interim Ordinance expands the ordinance exemptions to enable potential applicants who were cultivating medical marijuana in greenhouses or indoor cultivation sites, or had made substantial progress toward such cultivation, prior to July 7, 2015 to apply for County permits under existing County regulations. This ordinance, which extends and amends Interim Ordinance No. 5254, finds that there continues to be 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. As an urgency measure, this interim ordinance requires a four-fifths vote of the Board of Supervisors for adoption and takes effect immediately.

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

SECTION 1. FINDINGS AND DECLARATIONS

A. On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 to prohibit the collective or cooperative cultivation of medical marijuana and medical marijuana dispensaries within the unincorporated area of Monterey County, with limited exemptions, pending the County's study and consideration of regulations. Interim Ordinance No. 5254 is attached hereto as Exhibit 1 and incorporated herein by reference.

B. On July 28, 2015, the Board of Supervisors adopted Interim Ordinance No. 5256 to extend Interim Ordinance No. 5254 by 10 months and 15 days, until and through July 5, 2016. Interim Ordinance No. 5256 is attached hereto as Exhibit 2 and incorporated herein by reference.

C. Government Code section 65858(a) permits the Board of Supervisors, following notice and public hearing and upon a four-fifths vote, to extend Interim Ordinance No. 5254 for one additional year, provided that the Board finds that there is a current and immediate threat to the public health, safety, or welfare, and that the uses that may be allowed or permitted without the interim ordinance would result in that threat to public health, safety, or welfare.

D. In enacting Interim Ordinance No. 5254 and Interim Ordinance No. 5256, the Board of Supervisors made several findings and declarations as to the current and immediate threat to the public health, safety, and welfare from the establishment of medical marijuana dispensaries and collective or cooperative medical marijuana cultivation facilities in the absence of specific regulations governing the use of real property for these land uses within the unincorporated County. All of the findings and declarations of Interim Ordinance No. 5254 and Interim Ordinance No. 5256 continue to be true and applicable and are incorporated by reference in this Interim Ordinance.

E. The Board further finds that medical marijuana dispensaries and the collective or cooperative cultivation of medical marijuana continue to pose a threat to public health, safety and welfare and that allowing those uses in the absence of County land use regulations specifically addressing medical marijuana will result in that threat to the public health, safety and welfare. The County is in the process of developing regulations that address the potentially adverse environmental and criminal impacts associated with large scale marijuana cultivation and distribution, with the intent to put in place a strong and effective regulatory structure consistent with federal law enforcement priorities, including preventing such harmful effects as distribution of marijuana to minors, involvement of criminal enterprises, illegal trafficking of drugs, and violence and use of firearms in the cultivation and distribution of marijuana.

F. County staff is currently in the process of developing regulations, but additional time is needed to complete the process of enacting permanent County regulations for medical marijuana. Since the County adopted Interim Ordinance Nos. 5254 and 5456, the state has adopted the Medical Marijuana Regulation and Safety Act (Business and Professions Code sections 19300, *et seq.*). More time is needed to develop County regulations consistent with the new state law and to perform public outreach, conduct environmental review, and hold public hearings to consider draft regulations. Enactment of regulations in the coastal zone will also need more time to enable Coastal Commission certification of such regulations. A second extension of Interim Ordinance No. 5254, for an additional 12 months from enactment of this ordinance, is warranted to provide extra time to prepare and enact the regulations.

G. While the permanent regulations are in development, the Board of Supervisors is considering this second extension in advance of the July 5, 2016 expiration date in order to amend the interim ordinance to remove a barrier to compliance for potential applicants who were cultivating medical marijuana in greenhouses or indoor cultivation sites in compliance with state law, or had made substantial progress toward such cultivation, prior to the adoption of Interim Ordinance No. 5254 and who desire to obtain all required County permits but are prevented by the interim ordinance from doing so. An amendment to Interim Ordinance No. 5254 to expand the ordinance exemptions is warranted, so limited operations are given a path to come into

compliance with existing County regulations, subject to appropriate conditions that ensure that public health and safety is protected and on condition that such operations are not exempt from any permanent medical marijuana cultivation regulations which the County may subsequently adopt.

H. On February 26, 2016, the Board of Supervisors conducted a public hearing on this extension and amendment of Interim Ordinance No. 5254. Notice of the public hearing was published in the *Monterey County Herald* and *Salinas Californian* at least ten days in advance of the hearing pursuant to Government Code section 65090.

I. On February 16, 2016, the Board of Supervisors issued a written report pursuant to Government Code section 65858(d) describing the measures the County of Monterey has taken and continues to take in order to alleviate the conditions which led to the adoption of the interim ordinance.

J. In light of the above findings and declarations, it is necessary to extend Interim Ordinance No. 5254, as previously extended by Interim Ordinance No. 5256 and as modified by this ordinance, for 12 months, until and through February 26, 2017.

K. This extension and modification of Interim Ordinance No. 5254 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. AMENDMENT TO DEFINITIONS. Section 3 (Definitions) of Ordinance No. 5254 is amended to read as follows:

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. **Good cause.** "Good cause" means the presence of compelling factors that are not under the control of the property owner, such as a substantial delay in the County permitting or licensing processes due to circumstances beyond the control of the property owner.

D. **Greenhouse.** "Greenhouse" means a fully enclosed permanent structure that is clad in transparent material with climate control, such as heating and ventilation capabilities and supplemental artificial lighting, and that uses a combination of natural and supplemental artificial lighting for cultivation.

DE. **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.

F. **Indoor cultivation site.** “Indoor cultivation site” means an area within a fully enclosed structure, that was legally constructed or erected for occupancy as a Factory Industrial F-1 or Factory Industrial F-2 operation (as those term are defined in the International Building Code Sections 306.1, 306.2, and 306.3) that uses exclusively artificial lighting for cultivation.

EG. **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).

EH. **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.

EI. **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.

EJ. **Property owner.** “Property owner” means the individual or entity who is the record owner, or an agent or assign or prospective purchaser duly authorized in writing by the record owner, of the subject property where a medical marijuana dispensary or medical marijuana cultivation site is located or is proposed to be located.

EK. **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 3. AMENDMENT TO EXEMPTIONS. Section 5 (Exemptions) of Ordinance No. 5254 is amended to read as follows:

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.

Any medical marijuana dispensary that operates under this provision does not exempt the property owner from the requirements of any County ordinance which the County may subsequently adopt relating to dispensing of marijuana. Within thirty days (30) of the effective date of any such newly adopted regulations, the property owner must apply for any permits or licenses required by those regulations for the dispensing of medical marijuana. If the property owner does not receive the required County permits and licenses within one (1) year of the effective date of the newly adopted regulations, any medical marijuana dispensary which was allowed under this Interim Ordinance exemption shall cease. This one (1) year deadline may be extended by the Director of Planning for good cause.

D. This interim ordinance does not prohibit collective or cooperative medical marijuana cultivation in a greenhouse or indoor cultivation site if the property owner demonstrates to the satisfaction of the Director of Planning that substantial progress towards cultivation at a greenhouse or indoor cultivation site within the jurisdiction of unincorporated Monterey County had occurred prior to July 7, 2015, and if the property owner applies for and obtains all necessary County discretionary and ministerial permits required to commence cultivation under existing regulations. "Substantial progress" shall be determined by the Director of Planning and requires the property owner to provide proof based on substantial evidence of all of the following conduct:

1. Ownership of a viable greenhouse or indoor cultivation site, or the execution of a lease, purchase, lease option agreement, purchase agreement, or letter of intent for a viable greenhouse or indoor cultivation site;
2. Preparation of the above-referenced greenhouse or indoor cultivation site for medical marijuana cultivation;
3. Substantial financial investment in the preparation of medical marijuana cultivation at a greenhouse or indoor cultivation site including written documentation of the purchase of applicable materials such as plumbing fixtures, electrical devices, soils, seeds, mature plants, or immature plants;
4. Proof that the medical marijuana cultivation will be on behalf of a medical marijuana cooperative or collective; and
5. Proof that the proposed greenhouse or indoor cultivation site existed and was legally permitted prior to July 7, 2015. Any modifications would require appropriate permits.

Permission to commence cultivation under this provision does not exempt the property owner from the requirements of any County ordinance which the County may subsequently adopt relating to cultivation of marijuana. Within thirty days (30) of the effective date of any such newly adopted regulations, the property owner must apply for any permits or licenses required by those regulations for the cultivation of medical marijuana. If the property owner does not receive the required County permits and licenses within one (1) year of the effective date of the newly adopted regulations, any cultivation which was allowed under this Interim Ordinance exemption shall cease. This one (1) year deadline may be extended by the Director of Planning for good cause.

E. This interim ordinance does not prohibit collective or cooperative medical marijuana cultivation at a greenhouse or indoor cultivation site if the property owner demonstrates to the satisfaction of the Director of Planning that such cultivation had commenced prior to July 7, 2015 and if the property owner applies for, obtains, and complies with all County land use permits and entitlements required for such cultivation.

SECTION 4. EXTENSION

Based on all of the foregoing findings and declarations, the Board of Supervisors hereby extends Interim Ordinance No. 5254, as previously extended by Interim Ordinance No. 5256 and as amended by this interim ordinance, for 12 months, until and through February 26, 2017. All other provisions of Interim Ordinance No. 5254 shall remain in full force and effect. In no circumstance shall Interim Ordinance No. 5254, as adopted and previously extended by Interim Ordinance No. 5256 and as hereby amended and extended, be interpreted to sanction any violation of state law or County regulation.

SECTION 5. EFFECTIVE DATE

Pursuant to the findings and declarations set forth in this interim ordinance and Interim Ordinance No. 5254 and Interim Ordinance No. 5256, the Board declares that this interim ordinance is necessary as an urgency measure for preserving the public health, safety and welfare and that this interim ordinance shall take effect immediately upon adoption for the reasons set forth herein. This interim ordinance shall be of no further force and effect upon its expiration pursuant to Section 4.

PASSED AND ADOPTED this ____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Jane Parker, 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

