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

Resolution No. 19-015

REF150048/Outdoor Cannabis Cultivation Pilot Program

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) Adopt an ordinance adding Chapter 21.69 to Title 21 (non-coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the inland Carmel Valley Master Plan and Cachagua Area Plan unincorporated areas of Monterey County (**Attachment 1**); and
- c) Adopt an ordinance adding Chapter 20.69 to the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the coastal Big Sur Land Use Plan unincorporated area of Monterey County (**Attachment 2**).

The proposed ordinances adding regulations to the Monterey County Code establishing the outdoor commercial cannabis cultivation pilot program came before the Planning Commission at a duly noticed public hearing on May 8, 2019 and May 29, 2019. 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 adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance Number 5270, amending sections of Title 21 and adding Chapter 21.67 to Monterey County Code), and on July 19, 2016 the Monterey County Board adopted regulations establishing criteria for issuing local business permits pursuant to the MMRSA (Ordinance Numbers 5272 and 5273, codified at Monterey County Code Chapters 7.02 and 7.90). These ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial medical cannabis activities, 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 Monterey County Code Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Section 15372 of the Elections Code, and Ordinance Numbers 5270, 5272, and 5273 became operative.

8. Also on July 12, 2016, the Monterey County Board of Supervisors adopted a resolution of intent to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. These regulations were sent to the California Coastal Commission for certification, but the County withdrew the regulations because of discussions with Coastal Commission staff.

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 Monterey County Board of Supervisors, adopted:

a. An ordinance amending inland zoning regulations to regulate medicinal and adult-use commercial cannabis activities in the inland unincorporated area of Monterey County consistent with state law (Ordinance Number 5292).

b. A resolution of intent to adopt an ordinance 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 (Resolution of Intent 17-501).

c. An ordinance amending Chapter 7.90 to the Monterey County Code to add commercial adult-use cannabis activities to the County's current commercial medical cannabis permit regulatory structure and to regulate the operation of commercial adult-use cannabis activities in a manner that is consistent with state law (Ordinance Number 5293); and

d. An ordinance amending Section 7.02.060 of the Monterey County Code to add commercial adult-use cannabis activities as a type of business that must obtain a business license within the unincorporated area of Monterey County (Ordinance Number 5294).

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 County needs to submit Resolution of Intent No. 18-413 to the Coastal Commission for certification. If certified by the Coastal Commission, the ordinance will then need to be adopted by the Board of Supervisors.

15. Ordinances and resolutions adopted by the Board of Supervisors have created and amended a regulatory system that directs commercial cannabis activities to existing greenhouses and within industrial lands and excluded outdoor commercial cannabis cultivation within the unincorporated areas of Monterey County. The draft ordinances attached as Attachments 1 and 2 to this resolution would establish a five-year pilot program to allow limited outdoor commercial cannabis cultivation and outdoor cultivation ancillary.

16. 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.

17. 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 a 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.

18. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.
Outdoor Commercial Cannabis Pilot Program (REF150048)

19. 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).

20. 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.

21. On May 8, 2019, 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 least 10 days before the hearing date, notices of the hearing before the Planning Commission were published in The Monterey County Weekly. On May 8, 2019, the Planning Commission continued the public hearing on this matter to May 29, 2019.

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 the pursuant to Business and Professions Code section 26055(h).
- b) Adopt an ordinance adding Chapter 21.69 to Title 21 (non-coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the inland Carmel Valley Master Plan and Cachagua Area Plan unincorporated areas of Monterey County (**Attachment 1**); and
- c) Adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the coastal Big Sur Land Use Plan unincorporated area of Monterey County (**Attachment 2**),

PASSED AND ADOPTED on this 29th day of May, 2019, upon the motion of Commissioner Mendoza, seconded by Commissioner Gonzalez, by the following vote:

AYES: Duflock, Diehl, Monsalve, Getzelman, Gonzalez, Mendoza

NOES: Coffelt

ABSENT: Ambriz, Roberts, Vandevere

By: 

Brandon Swanson, Planning Commission Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 20.69 TO TITLE 20 (COASTAL ZONING) OF THE MONTEREY
COUNTY CODE TO ESTABLISH AN OUTDOOR COMMERCIAL CANNABIS
CULTIVATION PILOT PROGRAM**

County Counsel Summary

This ordinance adds Chapter 20.69 to Title 20 (coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the coastal Big Sur Land Use Plan unincorporated area of Monterey County. The purpose of the pilot program is to analyze the impacts of outdoor commercial cannabis cultivation; evaluate the establishment of long-term regulations; provide those who historically cultivated cannabis an opportunity to participate; and to reduce negative impacts to the environment. The pilot program establishes outdoor commercial cannabis cultivation not exceeding 10,000 square feet of canopy and specified related cannabis activities in the Big Sur Land Use Plan area as a use allowed subject to a Coastal Administrative Permit in each case within specified zoning districts and subject to specified eligibility criteria. Specified zoning districts include the Rural Density Residential and Watershed and Scenic Conservation, with allowance of the particular use within each zoning district dependent on factors specified by the ordinance. Other criteria specified in the ordinance must be met for a property to be eligible for the pilot program.

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 cannabis related conduct 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 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 Number 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 Numbers 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 Numbers 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 activities. Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

L. Also on December 5, 2017, the Board of Supervisors adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Parts 1 and Part 2 (Title 20, coastal zoning ordinance) of the MCC to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with MAUCRSA; 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 located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site. Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

M. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1 (North County Land Use Plan amendment and Commercial Cannabis Ordinance) as submitted by the County.

N. On March 20, 2018, the Board of Supervisors adopted the North County Land Use Plan amendment and coastal zoning regulations, as certified by the Coastal Commission, establishing criteria for issuing local land use permits pursuant to the MAUCRSA (Ordinance Number 5299, amending sections of Title 20 and adding Chapter 20.67 to the MCC).

O. 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, 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. The County needs to submit Resolution of Intent No. 18-413 to the Coastal Commission for certification. If certified by the Coastal Commission, the ordinance will then need to be adopted by the Board of Supervisors.

P. The purpose of this ordinance is to provide uniform procedures, applicable to the coastal unincorporated areas of Monterey County, for consideration of a permits for outdoor commercial cannabis cultivation on a limited and temporary basis. The Board of Supervisors is acting on a separate similar ordinance applicable to the inland unincorporated area. Together these ordinances are intended to establish an outdoor commercial cannabis cultivation pilot program for Monterey County. The pilot program is intended gather data and information related to outdoor cannabis cultivation and outdoor cultivation ancillary uses to enable the County to evaluate the establishment of long-term regulations; to provide those who historically

cultivated cannabis within the Big Sur Land Use Plan area an opportunity to participate in the legalized commercial cannabis industry; to 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.

Q. 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.

R. In addition to this ordinance, outdoor cultivation and associated activities will be 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.

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

T. 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.

U. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Business and Professions Code section 26055(h), which provides a statutory exemption from CEQA where, prior to July 1, 2019, the local agency adopts an ordinance that requires discretionary review of permits, including applicable environmental review under CEQA, to engage in commercial cannabis activity. This ordinance requires a Coastal Administrative Permit for all commercial cannabis activities, and each Coastal Administrative Permit would be individually subject to applicable environmental review under CEQA.

SECTION 2. Chapter 20.69 is added to the Monterey County Code to read as follows:

Chapter 20.69
OUTDOOR COMMERCIAL CANNABIS CULTIVATION PILOT PROGRAM

Sections:

20.69.010 – Definitions.

- 20.69.020 – Purpose.**
- 20.69.030 – Applicability and duration.**
- 20.69.040 – Permits required.**
- 20.69.050 – Qualified properties.**
- 20.69.060 – Regulations.**
- 20.69.070 – Required findings.**
- 20.69.080 – Required conditions.**
- 20.69.090 – Application requirements.**
- 20.69.100 – Suspension, revocation, and enforcement.**

20.69.010 Definitions.

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapters 20.06 and 20.67 shall otherwise apply.

A. “Cannabis Site” means the location or area specified in the permit issued pursuant to this Chapter, that is owned, leased, or otherwise held under the control of the applicant or permittee where outdoor cultivation and outdoor cultivation ancillary uses will be conducted. The cannabis site shall be on one lot and shall only be occupied by one permittee.

B. “Lot” shall have the same meaning as in Section 20.06.760 of this Title.

C. “Outdoor Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time.

D. “Outdoor Cultivation Ancillary Uses” means supportive nursery, self-distribution, and self-processing activities as those terms are defined in this Chapter.

E. “Pilot Program” means the outdoor commercial cannabis cultivation pilot program established in this Chapter.

F. “Principal Residence” means a dwelling occupied by a resident and where the resident lives more than fifty percent (50%) of the year, defined herein as one-hundred eighty three (183) days or more per calendar year.

G. “Self-distribution” means the transport of cannabis grown onsite and nonmanufactured cannabis products produced onsite to another permitted and licensed cannabis business at an offsite facility.

H. “Self-processing” means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or nonmanufactured cannabis products grown or produced onsite.

I. "Supportive Nursery" means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of outdoor cannabis cultivation onsite. Artificial lighting is permissible only to maintain immature plants in a supportive nursery.

20.69.020 Purpose.

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 Big Sur Land Use Plan area;
- 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 Big Sur Land Use Plan area 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.

20.69.030 Applicability and duration.

A. Notwithstanding the provisions of Chapter 20.67 of this Title, the provisions of this Chapter are applicable to outdoor cultivation and outdoor cultivation ancillary uses within the Rural Density Residential (RDR), and Watershed and Scenic Conservation Zoning (WSC) districts of the Big Sur Land Use Plan area. Chapter 20.67 shall apply to all other commercial cannabis activities not covered in this Chapter.

B. The duration of the pilot program shall be five (5) years from the effective date of the ordinance enacting this Chapter.

20.69.040 Permits required.

A. Except as provided in Section 20.67.090 of this Title, commercial cannabis activities shall not be allowed in the unincorporated coastal areas of Monterey County without first securing all permits, licenses, or other entitlements required by state law and County regulation.

B. A Coastal Administrative Permit shall be required for all outdoor cultivation and outdoor cultivation ancillary uses provided for in this pilot program. The application for a

Coastal Administrative Permit, and for amendments thereto and extensions thereof, shall be processed in accordance with Chapter 20.76 of this Title. The Chief of Planning is the Appropriate Authority to consider issuance, extension of, and amendment to such permits. Appeals from the decision of the Chief of Planning shall be governed by Chapter 20.86 of this Title. Notwithstanding the foregoing, the procedures for suspension and revocation of a Coastal Administrative Permit granted under this pilot program shall be as set forth in sections 20.67.110 and 20.67.120 of this Title.

C. All Coastal Administrative Permits issued pursuant to this pilot program shall expire within five (5) years from the approval date or upon the termination of the pilot program, whichever occurs first. On or before the five (5) year expiration of this pilot program, the County shall evaluate the pilot program to determine if the program should be terminated, extended, or modified. Permits approved pursuant to this Chapter shall not survive or have continuing application beyond the expiration of the pilot program unless the program is extended or modified by the Board of Supervisors. Approval of Coastal Administrative Permits pursuant to this pilot program and commencement of allowed uses shall not establish a non-conforming use. If the pilot program is extended or modified, new land use entitlements, as may be specified in the extended or modified regulations, must be obtained.

D. In addition to a Coastal Administrative Permit, pursuant to Chapters 7.02 and 7.90 of the Monterey County Code, a Business License and a Commercial Cannabis Business Permit shall be required for all outdoor cultivation and outdoor cultivation ancillary uses.

E. Pursuant to California Business and Professions Code section 26000 *et seq.*, a valid license from the State shall be required for all outdoor cultivation and outdoor cultivation ancillary uses.

F. The owner shall post or cause to be posted on the cannabis site all required County and state permits and licenses required to operate. Such posting shall be located in a conspicuous location at or near the location where the outdoor cultivation and outdoor cultivation ancillary uses occur, and a copy of the permits and licenses shall be kept in all vehicles that transport cannabis or nonmanufactured cannabis products.

G. The owner and all permittees shall maintain clear and adequate records and documentation demonstrating that all cannabis or nonmanufactured cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations. The County shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the County upon request.

H. The owner and all permittees shall conduct outdoor cultivation and outdoor cultivation ancillary uses in compliance with all required County permits and state licenses, and in compliance with state law and County law. The owner and all permittees shall be responsible for the payment of all required inspection fees, permit fees, and taxes.

20.69.050 Qualified properties.

- 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 Big Sur Land Use Plan area.
 - 2. The cannabis site is within an area zoned Rural Density Residential (RDR) or Watershed and Scenic Conservation (WSC) Zoning as designated on the Sectional District Zoning Maps.
 - 3. The cannabis site is located on a lot that has a dwelling onsite and the dwelling is a principal residence, or had a dwelling that was destroyed by a natural disaster within the last five (5) years and the dwelling was a principal residence.
 - 4. 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 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 one 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.
- 2. Documentary evidence that 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 Big Sur Land Use Plan in the coastal zone as restricted by this Chapter, and in the Carmel Valley Master Plan and Cachagua Area Plan as restricted by Chapter 21.69 of the Monterey County Code. The uses permitted under this pilot program are expressly prohibited in all other unincorporated areas of Monterey County.

20.69.060 Regulations.

Permits for outdoor cultivation and outdoor cultivation ancillary uses shall comply with all of the following regulations:

A. Activities allowed pursuant to this pilot program shall be limited to outdoor cultivation and outdoor cultivation ancillary uses. Indoor and mixed-light cultivation, and any form of manufacturing, testing, and retail operations are excluded from this pilot program.

B. Outdoor cultivation and outdoor cultivation ancillary uses shall obtain and maintain a permit required pursuant to Section 20.69.040 of this Chapter prior to commencement of activities, and shall establish and maintain all activities in accordance with all requirements, regulations, limitations, and conditions established in this Chapter and as may be applied to a permit approved pursuant to this Chapter.

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 fifty (50) feet, or more if warranted during review of the specific circumstances of the case, from the nearest offsite structure. An exception to the setback from offsite structures may be considered by the Appropriate Authority if express written consent of the owner(s) of the property on which the offsite structure is located is provided. 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.

D. Outdoor cultivation and outdoor cultivation ancillary uses shall be sited in conformance with the minimum setbacks established in Subsection C of this Section for the purposes of mitigating odor impacts. Exceptions to setbacks may be considered by the Appropriate Authority for supportive nursery cannabis sites. Exceptions to setbacks may also be considered for outdoor cultivation ancillary uses located entirely within an approved structure, and having adequate odor mitigation technologies incorporated as determined by the Appropriate Authority. 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.

E. Outdoor cultivation and outdoor cultivation ancillary uses shall be located only within a permitted cannabis site. Cannabis sites shall be located in areas where prior cultivation activities occurred on the lot, except when previously utilized areas or structures on the qualified property do not conform to one or more standards contained herein or cannot comply with other applicable state or local regulations. In such cases, reconfiguration of the cannabis sites and associated infrastructure may be permitted provided that the reconfiguration results in compliance with the terms of this pilot program and will not conflict with other applicable provisions of state and County law including the applicable provisions of the Local Coastal Program.

F. Outdoor cultivation and outdoor cultivation ancillary uses shall be subject to applicable use of private road regulations contained in the Monterey County Code.

G. Outdoor cultivation and outdoor cultivation ancillary uses shall not take place on federal lands or on lots where the only access is through federal land.

H. Outdoor cultivation and outdoor cultivation ancillary uses may only be permitted on a lot that has a dwelling onsite. In no case shall a building built as a single-family dwelling or multiple family dwelling be used for outdoor cultivation and outdoor cultivation ancillary uses, except that the dwelling may be used for offices related to the permitted cannabis activities, or for the purposes of providing sanitary facilities and break areas for employees employed onsite.

I. No visual indications that outdoor cultivation and outdoor cultivation ancillary uses occur on the site shall be visible from offsite, including but not limited to cannabis plants, markers, and similar indicators of cannabis activities.

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 ten thousand (10,000) square feet or less of canopy on any one lot.

K. Security measures sufficient to restrict access to only those intended and to deter trespass and theft of cannabis or cannabis products shall be provided and maintained. If onsite security is utilized, such onsite security shall not use or possess firearms or other lethal weapons. Fencing is only required where other reasonable limitations to access to the cannabis site cannot be provided. Fencing and other structures and improvements for the purposes of providing security shall be subject to the applicable permit(s), including siting and design criteria for the site.

L. Pesticides and fertilizers shall be properly labeled, stored, and applied to avoid and prevent contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife. Approved outdoor cultivation operations using pesticides shall obtain the appropriate permits, licenses, or clearances from the Monterey County Agricultural Commissioner and the Environmental Health Bureau, as applicable.

M. Lighting inside and outside of all structures shall be unobtrusive and constructed or located so that only the area intended is illuminated, long range visibility is reduced, the lighting source is not visible from offsite, and glare is fully controlled.

N. All necessary fire prevention measures, as determined by the appropriate fire district personnel, shall be provided and maintained onsite.

O. Adequate water supply sources to meet all onsite uses shall be provided. Water use includes, but is not limited to, irrigation water, and permanent potable water for all employees.

P. All necessary waste water facilities, as determined by the Monterey County Environmental Health Bureau, shall be provided.

Q. The following additional plans and information shall be created, reviewed, permitted and implemented, as applicable, during operations:

1. A water management plan including the proposed water supply, written permission to access to water if the source is a water system or surface diversion, proposed water conservation measures, and any water offset.

2. Information regarding stormwater control and wastewater discharge. Such plans shall be sufficient to prevent erosion and other water quality impacts on or offsite.

3. A storage and hazard response plan for all pesticides, fertilizers, and any other hazardous materials kept on site.

4. All power source(s) for commercial cannabis activities at the site including any proposed energy offsets. Generators shall not be permitted as the permanent power source.

5. A cannabis waste management plan including the method(s) for managing cannabis waste. Acceptable methods include onsite composting provided the composting site is clearly defined and approved as part of a permit pursuant to this pilot program, collection and processing of cannabis waste by an approved waste hauler in Monterey County, or self-haul of cannabis waste to a permitted solid waste or composting facility.

6. All permits shall also be subject to the resource protection policies contained in the Big Sur Land Use Plan and Coastal Implementation Plan.

20.69.070 Required findings.

A Coastal Administrative Permit for the cannabis activities allowed pursuant to this pilot program shall not be granted by the Appropriate Authority unless all of the following findings are made based on substantial evidence:

- A. The outdoor cultivation and outdoor cultivation ancillary uses, as proposed, comply with all of the requirements of Chapter 20.69.
- B. Adequate energy, sewer, and water services exist or can be provided for the use(s) proposed.
- C. The location of the cannabis site(s) and the establishment or operation of outdoor cultivation and outdoor cultivation ancillary uses are consistent with the text, policies and regulations of the Big Sur Land Use Plan and Coastal Implementation Plan.
- D. Any environmental impacts considered potentially significant are mitigated.
- E. The plans include adequate facilities and operational measures to address security, health and safety standards, and other standards that minimize or avoid nuisances and impacts on the lot and in the neighborhood where the activities are proposed.

20.69.080 Required conditions.

In addition to any other conditions and mitigation measures required by the Appropriate Authority, all of the following conditions shall apply to all permits for outdoor cultivation and outdoor cultivation ancillary uses:

- A. The owner and permittees shall allow access to the cannabis site and access to records if requested by the County, its officers, or agents, and shall pay for an annual inspection and submit to inspections from the County or its officers to verify compliance with all relevant rules, regulations, and conditions.
- B. The applicant, owner, and permittees shall indemnify, defend, and hold the County harmless from any and all claims and proceedings relating to the approval of the permit or relating to any damage to property or persons stemming from the commercial cannabis activity.
- C. Any person engaged in the cannabis activities allowed pursuant to the pilot program shall obtain and maintain all required state and County permits and licenses, including a valid and fully executed Business License and Commercial Cannabis Business Permit pursuant to Chapters 7.02 and 7.90 of the Monterey County Code.
- D. The owner shall be responsible for ensuring that all commercial cannabis activities at the site operate in good standing with all permits and licenses required by state law and the Monterey County Code. Failure to take appropriate actions to evict or otherwise remove permittees and persons conducting commercial cannabis activities at the site who do not maintain permits or license in good standing with the state or County shall be grounds for the suspension or revocation of permits pursuant to Sections 20.67.110 and 20.67.120 of the Monterey County Code.

20.69.090 Application requirements.

All applications for a Coastal Administrative Permit for outdoor cultivation and outdoor cultivation ancillary uses shall be filed with the Resource Management Agency on the form and in the manner prescribed by the Chief of Planning, or his or her designee. In all cases, the application shall contain, without limitation the following documentation:

A. Notarized, written authorization from all persons and entities having a right, title or interest in the property that is the subject of the application consenting to the application and the operation of the proposed commercial cannabis activities on the subject property.

B. A site plan containing the following minimum information:

1. Boundaries of lot and the cannabis site(s) wherein each of the proposed cannabis activities will occur;
2. Access roads and driveways to the lot from the nearest public road;
3. Entrances and exits to and from all proposed cannabis sites;
4. All existing and proposed structures, wells, septic systems, parking areas, and utilities at the lot;
5. All easements and all water bodies on the lot;
6. Assessor's Parcel Number;
7. Property boundaries and distance from all cannabis sites to structures on neighboring properties, if structures are located within one thousand five hundred (1,500) feet of the cannabis site(s);
8. Topographic information including areas of the property containing slopes greater than twenty five percent (25%); and
9. The diagram shall be to scale.

C. A cultivation plan containing a cannabis site diagram showing all boundaries and dimensions in feet of the following proposed areas to scale:

1. Location of and aggregate square footage of canopy area(s) for all outdoor cultivation on the lot;
2. Location of and aggregate square footage of canopy areas for all supportive nursery operations on the lot;
3. Designated pesticide and other agricultural chemical storage area(s);

4. Designated self-processing area(s), if processing will occur on site;
5. Designated composting area(s), if composting will occur on site or designated secured area(s) for cannabis waste if composting does not occur on site;
6. Designated area(s) for harvested cannabis storage;
7. Common use area(s) such as hallways, bathrooms, or break rooms; and
8. The Geospatial Positioning System (GPS) Coordinates for the boundaries of each cannabis site.

D. An operations plan including at a minimum, the following information:

1. Onsite security plan including both physical and operation measures;
2. An odor management plan, including progressive measures that will be taken if needed to address odor complaints;
3. Proposed hours of operation;
4. Employee safety and training plan;
5. Water management plan including the proposed water supply and proposed conservation measures, and if water is obtained from a domestic water system, then proof of approval of use from the water system;
6. Waste management plan;
7. Sustainability measures including energy source and proposed energy efficiency measures;
8. Parking plan;
9. Hazardous waste storage plan and hazard response plan;
10. Stormwater control plans; and
11. Fuel and fire management plan.

E. A cross connection control survey completed by a qualified professional confirming that no cross connections will exist between potable water and irrigation uses.

F. Such other information as the Chief of Planning, or his or her designee, may require.

20.69.100 Suspension, revocation, and enforcement.

Grounds and procedures for suspension revocation and enforcement shall be as set forth in Sections 20.67.110, 20.67.120, and 20.70.130 of this Title.

SECTION 3. 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 4. 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 18th day of June 2019, by the following vote:

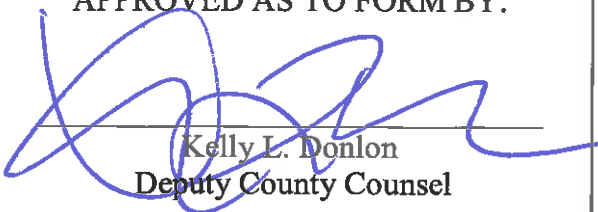
AYES:
NOES:
ABSENT:
ABSTAIN:

Chair, John M. Phillips
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

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 21.69 TO TITLE 21 (NON-COASTAL ZONING) OF THE
MONTEREY COUNTY CODE TO ESTABLISH AN OUTDOOR COMMERCIAL
CANNABIS CULTIVATION PILOT PROGRAM**

County Counsel Summary

This ordinance adds Chapter 21.69 to Title 21 (non-coastal zoning) of the Monterey County Code to establish a five-year pilot program for outdoor commercial cannabis cultivation and related activities in the inland Carmel Valley Master Plan and Cachagua Area Plan unincorporated areas of Monterey County. The purpose of the pilot program is to analyze the impacts of outdoor commercial cannabis cultivation; evaluate the establishment of long-term regulations; provide those who historically cultivated cannabis an opportunity to participate; and to reduce negative impacts to the environment. The pilot program establishes outdoor commercial cannabis cultivation not exceeding 10,000 square feet of canopy and specified related cannabis activities in the Carmel Valley Master Plan and Cachagua Area Plan areas as a use allowed subject to an Administrative Permit in each case within specified zoning districts and subject to specified eligibility criteria. Specified zoning districts include the Rural Density Residential (RDR), Farmlands (F), Permanent Grazing (PG), Rural Grazing (RG), and Resource Conservation (RC) zoning districts, with allowance of the particular use within each zoning district dependent on factors specified by the ordinance. Other criteria specified in the ordinance must be met for a property to be eligible for the pilot program.

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 cannabis related conduct 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 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 Number 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 Numbers 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 Numbers 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 activities. Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

L. Also on December 5, 2017, the Board of Supervisors adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Parts 1 and Part 2 (Title 20, coastal zoning ordinance) of the MCC to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with MAUCRSA; 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 located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site. Commercial cannabis sites were limited to greenhouses and indoor facilities that were legally established as of January 1, 2016.

M. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1 (North County Land Use Plan amendment and Commercial Cannabis Ordinance) as submitted by the County.

N. On March 20, 2018, the Board of Supervisors adopted the North County Land Use Plan amendment and coastal zoning regulations, as certified by the Coastal Commission, establishing criteria for issuing local land use permits pursuant to the MAUCRSA (Ordinance Number 5299, amending sections of Title 20 and adding Chapter 20.67 to the MCC).

O. 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, 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. The County needs to submit Resolution of Intent No. 18-413 to the Coastal Commission for certification. If certified by the Coastal Commission, the ordinance will then need to be adopted by the Board of Supervisors.

P. The purpose of this ordinance is to provide uniform procedures, applicable to the inland unincorporated areas of Monterey County, for consideration of a permits for outdoor commercial cannabis cultivation on a limited and temporary basis. The Board of Supervisors is acting on a separate similar ordinance applicable to the coastal unincorporated area. Together these ordinances are intended to establish an outdoor commercial cannabis cultivation pilot

program for Monterey County. The pilot program is intended gather data and information related to outdoor cannabis cultivation and outdoor cultivation ancillary uses to enable the County to evaluate the establishment of long-term regulations; to provide those who historically cultivated cannabis within the Carmel Valley Master Plan and Cachagua Area Plan areas an opportunity to participate in the legalized commercial cannabis industry; to 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.

Q. 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.

R. In addition to this ordinance, outdoor cultivation and associated activities will be 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.

S. The County intends to carry out the amendments in a manner fully in conformity with MAUCRSA.

T. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Business and Professions Code section 26055(h), which provides a statutory exemption from CEQA where, prior to July 1, 2019, the local agency adopts an ordinance that requires discretionary review of permits, including applicable environmental review under CEQA, to engage in commercial cannabis activity. This ordinance requires an Administrative Permit for all commercial cannabis activities, and each Coastal Administrative Permit would be individually subject to applicable environmental review under CEQA.

SECTION 2. Chapter 21.69 is added to the Monterey County Code to read as follows:

Chapter 21.69
OUTDOOR COMMERCIAL CANNABIS CULTIVATION PILOT PROGRAM

Sections:

- 21.69.010 – Definitions.**
- 21.69.020 – Purpose.**
- 21.69.030 – Applicability and duration.**
- 21.69.040 – Permits required.**
- 21.69.050 – Qualified properties.**
- 21.69.060 – Regulations.**
- 21.69.070 – Required findings.**
- 21.69.080 – Required conditions.**
- 21.69.090 – Application requirements.**
- 21.69.100 – Suspension, revocation, and enforcement.**

21.69.010 Definitions.

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapters 21.06 and 21.67 shall otherwise apply.

A. “Cannabis Site” means the location or area specified in the permit issued pursuant to this Chapter, that is owned, leased, or otherwise held under the control of the applicant or permittee where outdoor cultivation and outdoor cultivation ancillary uses will be conducted. The cannabis site shall be on one lot and shall only be occupied by one permittee.

B. “Lot” shall have the same meaning as in Section 21.06.760 of this Title.

C. “Outdoor Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time.

D. “Outdoor Cultivation Ancillary Uses” means supportive nursery, self-distribution, and self-processing activities as those terms are defined in this Chapter.

E. “Pilot Program” means the outdoor commercial cannabis cultivation pilot program established in this Chapter.

F. “Principal Residence” means a dwelling occupied by a resident and where the resident lives more than fifty percent (50%) of the year, defined herein as one-hundred eighty three (183) days or more per calendar year.

G. “Self-distribution” means the transport of cannabis grown onsite and nonmanufactured cannabis products produced onsite to another permitted and licensed cannabis business at an offsite facility.

H. “Self-processing” means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or nonmanufactured cannabis products grown or produced onsite.

I. “Supportive Nursery” means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of outdoor cannabis cultivation onsite. Artificial lighting is permissible only to maintain immature plants in a supportive nursery.

21.69.020 Purpose.

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 and Cachagua 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 and Cachagua 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.

21.69.030 Applicability and duration.

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 and the Cachagua 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 five (5) years from the effective date of the ordinance enacting this Chapter.

21.69.040 Permits required.

A. Except as provided in Section 21.67.090 of this Title, commercial cannabis activities shall not be allowed in the unincorporated non-coastal areas of Monterey County without first securing all permits, licenses, or other entitlements required by state law and County regulation.

B. An Administrative Permit shall be required for all outdoor cultivation and outdoor cultivation ancillary uses provided for in this pilot program. The application for an Administrative Permit, and for amendments thereto and extensions thereof, shall be processed in accordance with Chapter 21.70 of this Title. The Chief of Planning is the Appropriate Authority to consider issuance, extension of, and amendment to such permits. Appeals from the decision of the Chief of Planning shall be governed by Chapter 21.86 of this Title. Notwithstanding the foregoing, the procedures for suspension and revocation of an Administrative Permit granted under this pilot program shall be as set forth in Sections 21.67.110 and 21.67.120 of this Title.

C. All Administrative Permits issued pursuant to this pilot program shall expire within five (5) years from the approval date or upon the termination of the pilot program,

whichever occurs first. On or before the five (5) year expiration of this pilot program, the County shall evaluate the pilot program to determine if the program should be terminated, extended, or modified. Permits approved pursuant to this Chapter shall not survive or have continuing application beyond the expiration of the pilot program unless the program is extended or modified by the Board of Supervisors. Approval of Administrative Permits pursuant to this pilot program and commencement of allowed uses shall not establish a non-conforming use. If the pilot program is extended or modified, new land use entitlements, as may be specified in the extended or modified regulations, must be obtained.

D. In addition to an Administrative Permit, pursuant to Chapters 7.02 and 7.90 of the Monterey County Code, a Business License and a Commercial Cannabis Business Permit shall be required for all outdoor cultivation and outdoor cultivation ancillary uses.

E. Pursuant to California Business and Professions Code section 26000 *et seq.*, a valid license from the State shall be required for all outdoor cultivation and outdoor cultivation ancillary uses.

F. The owner shall post or cause to be posted on the cannabis site all required County and state permits and licenses required to operate. Such posting shall be located in a conspicuous location at or near the location where the outdoor cultivation and outdoor cultivation ancillary uses occur, and a copy of the permits and licenses shall be kept in all vehicles that transport cannabis or nonmanufactured cannabis products.

G. The owner and all permittees shall maintain clear and adequate records and documentation demonstrating that all cannabis or nonmanufactured cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations. The County shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the County upon request.

H. The owner and all permittees shall conduct outdoor cultivation and outdoor cultivation ancillary uses in compliance with all required County permits and state licenses, and in compliance with state law and County law. The owner and all permittees shall be responsible for the payment of all required inspection fees, permit fees, and taxes.

21.69.050 Qualified properties.

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 or the Cachagua Area Plan area.

2. The cannabis site is within one of the following zoning districts, as designated on the Sectional District Zoning Maps:

- i. Rural Density Residential (RDR)
- ii. Farmlands (F)
- iii. Permanent Grazing (PG)
- iv. Rural Grazing (RG)
- v. Resource Conservation (RC)

3. The cannabis site is located on a lot that has a dwelling onsite and the dwelling is a principal residence, or had a dwelling that was destroyed by a natural disaster within the last five (5) years and the dwelling was a principal residence.

4. 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 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 one 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.

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 and Cachagua 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.

21.69.060 Regulations.

Permits for outdoor cultivation and outdoor cultivation ancillary uses shall comply with all of the following regulations:

A. Activities allowed pursuant to this pilot program shall be limited to outdoor cultivation and outdoor cultivation ancillary uses. Indoor and mixed-light cultivation, and any form of manufacturing, testing, and retail operations are excluded from this pilot program.

B. Outdoor cultivation and outdoor cultivation ancillary uses shall obtain and maintain a permit required pursuant to Section 21.69.040 of this Chapter prior to commencement of activities, and shall establish and maintain all activities in accordance with

all requirements, regulations, limitations, and conditions established in this Chapter and as may be applied to a permit approved pursuant to this Chapter.

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 fifty (50) feet, or more if warranted during review of the specific circumstances of the case, from the nearest offsite structure. An exception to the setback from offsite structures may be considered by the Appropriate Authority if express written consent of the owner(s) of the property on which the offsite structure is located is provided. 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.

D. Outdoor cultivation and outdoor cultivation ancillary uses shall be sited in conformance with the minimum setbacks established in Subsection C of this Section for the purposes of mitigating odor impacts. Exceptions to setbacks may be considered by the Appropriate Authority for supportive nursery cannabis sites. Exceptions to setbacks may also be considered for outdoor cultivation ancillary uses located entirely within an approved structure, and having adequate odor mitigation technologies incorporated as determined by the Appropriate Authority. 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.

E. Outdoor cultivation and outdoor cultivation ancillary uses shall be located only within a permitted cannabis site. Cannabis sites shall be located in areas where prior cultivation activities occurred on the lot, except when previously utilized areas or structures on the qualified property do not conform to one or more standards contained herein or cannot comply with other applicable state or local regulations. In such cases, reconfiguration of the cannabis sites and associated infrastructure may be permitted provided that the reconfiguration results in

compliance with the terms of this pilot program and will not conflict with other applicable provisions of state and County law including the applicable provisions of the General Plan.

F. Outdoor cultivation and outdoor cultivation ancillary uses shall be subject to applicable use of private road regulations contained in the Monterey County Code.

G. Outdoor cultivation and outdoor cultivation ancillary uses shall not take place on federal lands or on lots where the only access is through federal land.

H. In no case shall a building built as a single-family dwelling or multiple family dwelling be used for outdoor cultivation and outdoor cultivation ancillary uses, except that the dwelling may be used for offices related to the permitted cannabis activities, or for the purposes of providing sanitary facilities and break areas for employees employed onsite.

I. No visual indications that outdoor cultivation and outdoor cultivation ancillary uses occur on the site shall be visible from offsite, including but not limited to cannabis plants, markers, and similar indicators of cannabis activities.

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 ten thousand (10,000) square feet of canopy on any one lot.

K. Security measures sufficient to restrict access to only those intended and to deter trespass and theft of cannabis or cannabis products shall be provided and maintained. If onsite security is utilized, such onsite security shall not use or possess firearms or other lethal weapons. Fencing is only required where other reasonable limitations to access to the cannabis site cannot be provided. Fencing and other structures and improvements for the purposes of providing security shall be subject to the applicable permit(s), including siting and design criteria for the site.

L. Pesticides and fertilizers shall be properly labeled, stored, and applied to avoid and prevent contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife. Approved outdoor cultivation operations using pesticides shall obtain the appropriate permits, licenses, or clearances from the Monterey County Agricultural Commissioner and the Environmental Health Bureau, as applicable.

M. Lighting inside and outside of all structures shall be unobtrusive and constructed or located so that only the area intended is illuminated, long range visibility is reduced, the lighting source is not visible from offsite, and glare is fully controlled.

N. All necessary fire prevention measures, as determined by the appropriate fire district personnel, shall be provided and maintained onsite.

O. Adequate water supply sources to meet all onsite uses shall be provided. Water use includes, but is not limited to, irrigation water, and permanent potable water for all employees.

P. All necessary waste water facilities, as determined by the Monterey County Environmental Health Bureau, shall be provided.

Q. The following additional plans and information shall be created, reviewed, permitted and implemented, as applicable, during operations:

1. A water management plan including the proposed water supply, written permission to access to water if the source is a water system or surface diversion, proposed water conservation measures, and any water offset.

2. Information regarding stormwater control and wastewater discharge. Such plans shall be sufficient to prevent erosion and other water quality impacts on or offsite.

3. A storage and hazard response plan for all pesticides, fertilizers, and any other hazardous materials kept on site.

4. All power source(s) for commercial cannabis activities at the site including any proposed energy offsets. Generators shall not be permitted as the permeant power source.

5. A cannabis waste management plan including the method(s) for managing cannabis waste. Acceptable methods include onsite composting provided the composting site is clearly defined and approved as part of a permit pursuant to this pilot program, collection and processing of cannabis waste by an approved waste hauler in Monterey County, or self-haul of cannabis waste to a permitted solid waste or composting facility.

6. All permits shall also be subject to the policies contained in the General Plan.

21.69.070 Required findings.

An Administrative Permit for the cannabis activities allowed pursuant to this pilot program shall not be granted by the Appropriate Authority unless all of the following findings are made based on substantial evidence:

A. The outdoor cultivation and outdoor cultivation ancillary uses, as proposed, comply with all of the requirements of Chapter 21.69.

B. Adequate energy, sewer, and water services exist or can be provided for the use(s) proposed.

C. The location of the cannabis site(s) and the establishment or operation of outdoor cultivation and outdoor cultivation ancillary uses are consistent with the text, policies and regulations of the General Plan.

D. Any environmental impacts considered potentially significant are mitigated.

E. The plans include adequate facilities and operational measures to address security, health and safety standards, and other standards that minimize or avoid nuisances and impacts on the lot and in the neighborhood where the activities are proposed.

21.69.080 Required conditions.

In addition to any other conditions and mitigation measures required by the Appropriate Authority, all of the following conditions shall apply to all permits for outdoor cultivation and outdoor cultivation ancillary uses:

A. The owner and permittees shall allow access to the cannabis site and access to records if requested by the County, its officers, or agents, and shall pay for an annual inspection of the cannabis site and submit to inspections from the County or its officers to verify compliance with all relevant rules, regulations, and conditions.

B. The applicant, owner, and permittees shall indemnify, defend, and hold the County harmless from any and all claims and proceedings relating to the approval of the permit or relating to any damage to property or persons stemming from the commercial cannabis activity.

C. Any person engaged in the cannabis activities allowed pursuant to the pilot program shall obtain and maintain all required state and County permits and licenses, including a valid and fully executed Business License and Commercial Cannabis Business Permit pursuant to Chapters 7.02 and 7.90 of the Monterey County Code.

D. The owner shall be responsible for ensuring that all commercial cannabis activities at the site operate in good standing with all permits and licenses required by state law and the Monterey County Code. Failure to take appropriate actions to evict or otherwise remove permittees and persons conducting commercial cannabis activities at the site who do not maintain permits or license in good standing with the state or County shall be grounds for the suspension or revocation of permits pursuant to Sections 21.67.110 and 21.67.120 of the Monterey County Code.

21.69.090 Application requirements.

All applications for an Administrative Permit for outdoor cultivation and outdoor cultivation ancillary uses shall be filed with the Resource Management Agency on the form and in the manner prescribed by the Chief of Planning, or his or her designee. In all cases, the application shall contain, without limitation the following documentation:

A. Notarized, written authorization from all persons and entities having a right, title or interest in the property that is the subject of the application consenting to the application and the operation of the proposed commercial cannabis activities on the subject property.

B. A site plan containing the following minimum information:

1. Boundaries of lot and the cannabis site(s) wherein each of the proposed cannabis activities will occur;
2. Access roads and driveways to the lot from the nearest public road;
3. Entrances and exits to and from all proposed cannabis sites;
4. All existing and proposed structures, wells, septic systems, parking areas, and utilities at the lot;
5. All easements and all water bodies on the lot;
6. Assessor's Parcel Number;
7. Property boundaries and distance from all cannabis sites to structures on neighboring properties, if structures are located within one thousand five hundred (1,500) feet of the cannabis site(s);
8. Topographic information including areas of the property containing slopes greater than twenty five percent (25%); and
9. The diagram shall be to scale.

C. A cultivation plan containing a cannabis site diagram showing all boundaries and dimensions in feet of the following proposed areas to scale:

1. Location of and aggregate square footage of canopy area(s) for all outdoor cultivation on the lot;
2. Location of and aggregate square footage of canopy areas for all supportive nursery operations on the lot;
3. Designated pesticide and other agricultural chemical storage area(s);
4. Designated self-processing area(s), if processing will occur on site;
5. Designated composting area(s), if composting will occur on site or designated secured area(s) for cannabis waste if composting does not occur on site;
6. Designated area(s) for harvested cannabis storage;
7. Common use area(s) such as hallways, bathrooms, or break rooms; and

8. The Geospatial Positioning System (GPS) Coordinates for the boundaries of each cannabis site.

D. An operations plan including at a minimum, the following information:

1. Onsite security plan including both physical and operation measures;
2. Odor management plan, including progressive measures that will be taken if needed to address odor complaints;
3. Proposed hours of operation;
4. Employee safety and training plan;
5. Water management plan, including the proposed water supply and proposed conservation measures, and if water is obtained from a domestic water system, then proof of approval of use from the water system;
6. Waste management plan;
7. Sustainability measures including energy source and proposed energy efficiency measures;
8. Parking plan;
9. Hazardous waste storage plan and hazard response plan;
10. Stormwater control plans; and
11. Fuel and fire management plan.

E. A cross connection control survey completed by a qualified professional confirming that no cross connections will exist between potable water and irrigation uses.

F. Such other information as the Chief of Planning, or his or her designee, may require.

21.69.100 Suspension, revocation, and enforcement.

Grounds and procedures for suspension revocation and enforcement shall be as set forth in Sections 21.67.110, 21.67.120, and 21.70.130 of this Title.

SECTION 3. 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 4. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this 18th day of June 2019, by the following vote:

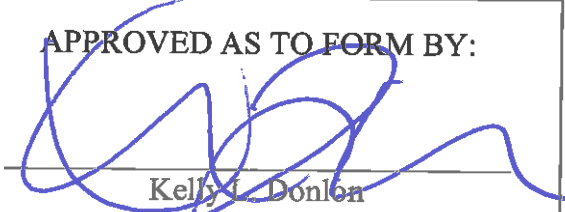
- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Chair, John M. Phillips
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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