

Attachment E

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

RESOLUTION NO. 17-047

REF150048/CANNABIS REGULATION UPDATES

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

- a) Find that ordinances regulating commercial cannabis activities, which require subsequent permitting that is individually subject to environmental review, qualifies for a statutory exemption from the California Environmental Quality Act pursuant to Section 15282 of the CEQA Guidelines. The Statutory exemption is provided for in Section 26055(h) of the Business and Professions Code;
- b) Amend the ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to remove the required setbacks from public parks and adopt the ordinance as amended to regulate medicinal and adult-use commercial cannabis activities in the inland unincorporated area of Monterey County consistent with state law (**Attachment 1**);
- c) Amend the ordinance amending Title 20 (coastal zoning ordinance) of the Monterey County Code to remove the required setbacks from public parks and adopt 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, as amended, to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with state law (**Attachment 2**); and
- d) Consider the text amendment to the North County Land Use Plan and the Implementation Plan, Part 2 affecting the property located at 7697 Highway 1, Moss Landing (the Former Kaiser National Refractories site) separately from the ordinances described in b) and c) above (**Attachment 3**).

The proposed amendments to the Monterey County Code modifying regulations for commercial cannabis activities in the unincorporated areas of Monterey County came before the Monterey County Planning Commission at a duly noticed public hearing on November 15, 2017. 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 federal 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. The federal government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement 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.

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 has since withdrawn the regulations because of discussions with Coastal Commission staff on revisions to the regulation language and intent.

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. Staff, working with an ad hoc committee of the Board of Supervisors, prepared draft ordinances amending regulations for commercial cannabis activities based on recent changes to state law (MAUCRSA) and with the intent to protect the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County.

12. On September 27, 2017, the Planning Commission conducted a public workshop to consider draft ordinances amending the County’s cannabis regulations based on MAUCRSA and provide direction to staff. Direction to staff included:

- a. Explore options to incorporate edits in the draft ordinances that allow self-distribution for cultivation permittees and incorporate if timing allows;
- b. Review the ban on firearms for security purposes with County law enforcement and members of the ad hoc committee to determine if that ban should be lifted in draft ordinance revisions; and
- c. Provide separate review, analysis, and processing of the LCP amendment for the former Kaiser Refractories site apart from the rest of the ordinance amendment package.

13. After considering feedback from the public and the Planning Commission at the workshop, staff prepared updated draft ordinances. The updated draft ordinances include:

- a. An ordinance amending Title 21 of the Monterey County Code (**Attachment 1**);
- b. An ordinance amending the Coastal Implementation Plan Parts 1 and 2 of the Monterey County certified Local Coastal Program (**Attachment 2**); and
- c. A text amendment to the North County Land Use Plan to allow permitting commercial cannabis uses at 7697 Highway 1, Moss Landing (the former Kaiser National Refractories site), despite the “coastal-dependent industry” land use designation (**Attachment 3**).

The updated draft regulations include policies that permit self-distribution/transportation for cannabis, nursery, and non-volatile permittees under certain conditions and with certain specified restrictions. The firearm restrictions have not changed in the draft ordinances at the request of the Sheriff. The firearm policies will continue to be discussed amongst County staff and may be revised in through future revisions to cannabis ordinances and regulations.

14. Separate review and site-specific analysis of the proposed revisions that apply only to the property located at 7697 Highway 1, Moss Landing (the former Kaiser National Refractories site) are warranted. Section 17 of the draft ordinance which amends the Coastal Cannabis Regulation Updates (REF150048)

Implementation Plan, Part 2 (Regulations for Development in the North County Land Use Plan area) and the North County Land Use Plan text amendment should be considered based on their own merits and based on the facts applicable to that specific site.

15. 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.

16. The ordinance amending Title 21 (Inland Zoning Regulations) and Title 20 (Coastal Zoning Regulations) together with the ordinances amending Chapters 7.90 and 7.02 of the Monterey County Code requiring a Commercial Cannabis Business Permit and a Business License for all commercial cannabis operations, are intended to establish criteria for issuing local permits pursuant to the MAUCRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice

17. For the ordinance amending the Coastal Implementation Plan and the North County Land Use Plan text amendments, 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 resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; the Board of Supervisors take subsequent final action on the ordinance after the Coastal Commission acts; and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending Parts 1 and 2 of the Coastal Implementation Plan and the North County Land Use Plan text amendment will not go into effect until after certification by the Coastal Commission and subsequent formal adoption by the Board of Supervisors at a duly noticed public hearing, 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 and the amendment to the North County Land Use Plan in a manner fully in conformity with the California Coastal Act.

19. State law (MAUCRSA) 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 a Use Permit, or Coastal Development Permit, for all commercial cannabis activities in the County. Use Permits and Coastal Development Permits are individually subject to CEQA review. Therefore, the County's updated regulations are statutorily exempt from CEQA review pursuant to Section 15282 of the Guidelines.

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 November 15, 2017, the Planning Commission held a duly noticed public hearing to consider the proposed amendments to the Local Coastal Program. At least 10 days before the hearing date, notices of the hearing before the Planning Commission were published in the Monterey County Herald and the Californian.

II. DECISION

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

- a) Find that ordinances regulating commercial cannabis activities, which require subsequent permitting that is individually subject to environmental review, qualifies for a statutory exemption from the California Environmental Quality Act pursuant to Section 15282 of the CEQA Guidelines. The Statutory exemption is provided for in Section 26055(h) of the Business and Professions Code;
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- d) Consider the text amendment to the North County Land Use Plan and the Implementation Plan, Part 2 affecting the property located at 7697 Highway 1, Moss Landing (the Former Kaiser National Refractories site) separately from the ordinances described in b) and c) above.

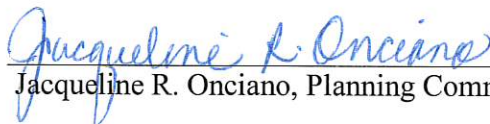
PASSED AND ADOPTED on this 15th day of November, 2017, upon the motion of Commissioner Diehl, seconded by Commissioner Getzelman, by the following vote:

AYES: Diehl, Duflock, Getzelman, Mendez, Padilla, Vandever

NOES: None

ABSENT: Ambriz

ABSTAIN: Roberts



Jacqueline R. Onciano, Planning Commission Secretary