

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



Carl P. Holm, AICP, Director  
John Guertin, Acting Deputy Director  
Daniel Dobrilovic, Acting Building Official  
Mike Novo, AICP, Director of Planning  
Benny J. Young, Interim Director of Public Works & Facilities

168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901  
(831)755-4800  
[www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)

## MEMORANDUM

**Date:** February 12, 2016

**To:** The Board of Supervisors

**From:** Craig Spencer, Project Planner

**Subject:** Proposed language for the February 26, 2016 public hearing

The purpose of this memorandum is to provide the Board of Supervisors with the proposed amendments to Interim Ordinance No. 5245, as extended by Interim Ordinance No. 5256 in advance of the Special Board hearing on February 26, 2016.

On February 16, 2016, the Board of Supervisors will consider issuing a report on the steps taken to alleviate the conditions which led to adoption of the interim ordinance as required by Government Code Section 65858. This report is required to be issued at least 10 days prior to consideration of any extension to the Interim Ordinance. On February 26, 2016, the Board of Supervisors will consider amending and extending the Interim Ordinance at a noticed public hearing. The attached interim ordinance amendment language is provided in advance of the February 26, 2016 Board hearing (**Attachment 1**). The proposed amendment language has been reviewed and recommended by the ad hoc committee on medical marijuana. Interim Ordinance Nos. 5254 and 5256 are attached for reference (**Attachment 2**).

A separate staff report will be provided in advance of the February 26, 2016 public hearing along with the entire proposed interim ordinance.

This page intentionally left blank

# Attachment 1

This page intentionally left blank.

**It is proposed that Section 3 (Definitions) to Interim Ordinance No. 5254 be amended as follows:**

For purposes of this interim ordinance, the following terms have the definitions set forth below:

A. **Collective or cooperative cultivation.** “Collective or cooperative cultivation” means cultivation by or on behalf of more than one qualified patient, person with an identification card, or a primary caregiver that associate collectively or cooperatively to cultivate marijuana for medical purposes, as referenced in Health and Safety Code section 11362.775.

B. **Cultivation.** “Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

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

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

~~DE.~~ **Identification card.** “Identification card” means a document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any. [no change in definition; moved to put in alphabetical order]

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

~~GC.~~ **Medical marijuana dispensary.** “Medical marijuana dispensary” means any facility or location which is used to make available and/or distribute marijuana for medical purposes to more than one primary caregiver, qualified patient, or patient with an identification card. “Medical marijuana dispensary” includes undertakings that are organized or operated as a collective or cooperative. The term “medical marijuana dispensary” does not include a licensed facility described in Health and Safety Code section 11362.7(d)(1).

~~EH.~~ **Person with an identification card.** “Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card.

~~IF.~~ **Primary caregiver.** “Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

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

KG. **Qualified patient.** “Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card issued pursuant to Health and Safety Code sections 11362.7 *et seq.*

**Section 4 (Regulations) of Interim Ordinance No. 5254 will remain the same:**

A. **Prohibition on collective or cooperative cultivation:** The collective or cooperative cultivation of medical marijuana is prohibited. The County shall not permit or allow, or process applications for land use entitlements for, the use of real property for collective or cooperative cultivation of marijuana for medical purposes.

B. **Prohibition on medical marijuana dispensaries:** Medical marijuana dispensaries are prohibited. The County shall not permit or allow, or process land use entitlements for, the use of real property for a medical marijuana dispensary.

C. These regulations apply during the term of this interim ordinance and any duly adopted extension of this interim ordinance, unless a specific exemption under this ordinance is applicable.

**It is proposed that Section 5 (Exemptions) to Interim Ordinance No. 5254 be amended as follows:**

A. This interim ordinance does not prohibit a qualified patient, a patient with an identification card, or a primary caregiver from cultivating up to six mature plants or twelve immature marijuana plants per qualified patient, or a greater number if recommended by a doctor consistent with the patient’s needs, within the limits set forth in Health and Safety Code section 11362.77, if the qualified patient or patient with an identification card is cultivating plants only for his or her own personal use, or if the primary caregiver is cultivating plants only for persons for whom he or she personally serves as a primary caregiver and not engaging in collective or cooperative cultivation.

B. This interim ordinance does not prohibit medical marijuana cultivation if the property owner demonstrates to the satisfaction of the Director of Planning that such cultivation had commenced and all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of this initial interim ordinance.

C. This interim ordinance does not prohibit the operation of any medical marijuana dispensary if the property owner demonstrates to the satisfaction of the Director of Planning that such use had commenced and all required County approvals and land use permits had been obtained prior to the date of the adoption of this initial interim ordinance.

Any medical marijuana dispensary that operates under this provision does not exempt the property owner from the requirements of any County ordinance which the County may subsequently adopt relating to dispensing of marijuana. Within thirty days (30) of the effective

date of any such newly adopted regulations, the property owner must apply for any permits or licenses required by those regulations for the dispensing of medical marijuana. If the property owner does not receive the required County permits and licenses within one (1) year of the effective date of the newly adopted regulations, any medical marijuana dispensary which was allowed under this Interim Ordinance exemption shall cease. This one (1) year deadline may be extended by the Director of Planning for good cause.

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

1. Ownership of a viable greenhouse or indoor cultivation site, or the execution of a lease, purchase, lease option agreement, or purchase option agreement for a viable greenhouse or indoor cultivation site;

2. Preparation of a viable greenhouse or indoor cultivation site;

3. Substantial financial investment in the preparation of cultivation at a greenhouse or indoor cultivation site including sales receipts for the purchase of materials including, but not limited to plumbing fixtures, electrical devices, soils, as well as seeds, mature plants, or immature plants;

4. Proof that applicant was a medical marijuana cooperative or collective prior to July 7, 2015; and

5. Proof that the proposed greenhouse or indoor cultivation site existed and was legally permitted prior to July 7, 2015. Any modifications would require appropriate permits.

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

E. This interim ordinance does not prohibit cultivation at a greenhouse or indoor cultivation site if the property owner demonstrates to the satisfaction of the Director of Planning

that such cultivation had commenced prior to July 7, 2015 and if the property owner applies for, obtains, and complies with all County land use permits and entitlements required for such cultivation.



## Attachment 2

This page intentionally left blank.

## ORDINANCE 5254

### AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, TEMPORARILY PROHIBITING MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE OR COOPERATIVE CULTIVATION OF MEDICAL MARIJUANA, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF REGULATIONS.

#### County Counsel Summary

*This interim ordinance is an urgency measure pursuant to Government Code section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of Monterey County. This ordinance finds that there is a current and immediate threat to the public health, safety and welfare associated with the collective cultivation, processing, and dispensing of medical marijuana in the absence of specific County land use regulation and that the temporary ban on new medical marijuana dispensaries and collective and cooperative cultivation is necessary to enable the County to study and develop appropriate land use regulations for medical marijuana consistent with state law. This ordinance is an interim urgency ordinance that requires a four-fifths vote of the Board of Supervisors for adoption. The ordinance would take effect immediately and would expire 45 days after its adoption unless extended by subsequent action of the Board of Supervisors.*

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 ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may as an urgency measure adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time.

C. County's zoning ordinances, Title 20 and Title 21 of the Monterey County Code, currently do not specifically regulate the use of land or structures for cultivation, processing, or dispensing of medical marijuana. Current County zoning regulations related to indoor and outdoor cultivation of crops and to pharmacies do not adequately address the unique legal, land use, and public health, safety and welfare issues and impacts associated with medical marijuana.

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

E. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing marijuana.

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

G. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Saf. 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. Pursuant to Health and Safety Code section 11362.77(a), a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient. In addition, they may also maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

H. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), held that neither the CUA nor the MMP expressly or impliedly preempt the authority of California counties or cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. The MMP allows cities and counties to adopt local ordinances that regulate the location, operation, or establishment of medical marijuana cooperatives or collectives and to enforce such ordinances. (Health & Saf. Code § 11362.83.)

I. Study of potential land use regulations is urgently needed because the County has received inquiries from collectives and cooperatives that seek to open medical marijuana dispensaries and cultivation facilities within the unincorporated areas of Monterey County, notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such facilities.

J. Without sufficient regulations, standards, procedures and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from the establishment of medical marijuana dispensaries and collective or cooperative cultivation facilities, including but not limited to the following harmful impacts from unregulated dispensaries and collective cultivation:

1. Marijuana dispensaries. Facilities that dispense medical marijuana have been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. The effects are due to such factors as the potential for illegal activity, the presence of large quantities of marijuana and cash at the dispensaries, the presence of weapons, and other factors. Numerous counties and cities have reported harmful effects at dispensaries and surrounding areas, which include an increase in

burglaries, robberies, assaults, illegal sale of drugs, possession of marijuana by unauthorized persons, loitering, smoking marijuana in public places, driving while under the influence of marijuana, decreased property values, and increased traffic. A temporary ban on medical marijuana dispensaries is necessary while County gathers data on the specific impacts of introducing medical marijuana dispensaries within the County and considers the enactment of land use regulations to appropriately address such impacts.

2. Cultivation. Collective or cooperative cultivation of medical marijuana has also been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. Harmful effects at both outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire danger from grow light systems, extensive energy consumption, and strong offensive odors. A temporary ban on collective or cooperative cultivation of medical marijuana is necessary while the County gathers County-specific data on the specific potential safety threats and environmental impacts associated with large scale cultivation and develops regulations that address these impacts of cultivation. Specific concerns include threats to public safety and law enforcement demands resulting from the high monetary value of the crop and significant impacts to the environment, as evidenced for example by the following:

a. The United States Drug Enforcement Administration reports that each marijuana plant under various planting conditions may yield an average of 236 grams, or about one-half pound, to 846 grams, or nearly two pounds in its lifetime. The "street value" of a single cannabis plant is substantial. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach \$2,000 to \$5,000, and far greater amounts in other states. Thus, a single marijuana plant can yield \$4,000 or more in salable marijuana.

b. According to a recent study of marijuana cultivation in Northern California by staff of California Department of Fish and Wildlife and National Marine Fisheries Services and academic researchers, water demand for marijuana cultivation has the potential to divert excessive portions of streamflow in the studied watersheds, and this diversion is in turn likely to have harmful impacts on state and federally listed salmon and steelhead trout. (*Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds*, (PLoS (Public Library of Science), published online March 18, 2015.)) The water demand associated with cultivation and its biological impacts are of particular concern in the County which has known water supply constraints, documented aquifer overdraft, and state and federally listed species that could be affected by such water use.

K. As a result of the above factors, a temporary ban on new medical marijuana dispensaries and new collective or cooperative cultivation of medical marijuana is necessary to enable the County study, develop, and consider regulations to protect County residents from these threats to public health, safety and welfare associated with the cultivation, processing, and dispensing of marijuana, in advance of permitting new medical marijuana dispensaries or allowing collective or cooperative cultivation. It is the intent of this interim ordinance to enact a ban that is only temporary in order to provide time for the County to study and develop

appropriate regulations for medical marijuana consistent with the Compassionate Use Act and the Medical Marijuana Program Act.

L. Pursuant to Government Code section 65858, this urgency interim ordinance may have duration of no more than 45 days and may be extended only twice, following notice and public hearing, once by 10 months and 15 days, and subsequently by one year. It is the County's intent that this interim ordinance shall be of no further force and effect after 45 days, unless the Board of Supervisors, following a noticed public hearing, elects to extend the Interim Ordinance pursuant to law.

M. The adoption of this interim ordinance is statutorily exempt from the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

## SECTION 2. APPLICABILITY

This interim ordinance applies in the coastal and non-coastal unincorporated areas of the County and applies in all zoning districts.

## SECTION 3. DEFINITIONS

For purposes of this interim ordinance, the following terms have the definitions set forth below:

A. **Collective or cooperative cultivation.** "Collective or cooperative cultivation" means cultivation by or on behalf of more than one qualified patient, person with an identification card, or a primary caregiver that associate collectively or cooperatively to cultivate marijuana for medical purposes, as referenced in Health and Safety Code section 11362.775.

B. **Cultivation.** "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

C. **Medical marijuana dispensary.** "Medical marijuana dispensary" means any facility or location which is used to make available and/or distribute marijuana for medical purposes to more than one primary caregiver, qualified patient, or patient with an identification card. "Medical marijuana dispensary" includes undertakings that are organized or operated as a collective or cooperative. The term "medical marijuana dispensary" does not include a licensed facility described in Health and Safety Code section 11362.7(d)(1).

D. **Identification card.** "Identification card" means a document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

E. **Person with an identification card.** "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card.

F. **Primary caregiver.** "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

G. **Qualified patient.** "Qualified patient" means a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card issued pursuant to Health and Safety Code sections 11362.7 *et seq.*

#### **SECTION 4. REGULATIONS**

A. **Prohibition on collective or cooperative cultivation:** The collective or cooperative cultivation of medical marijuana is prohibited. The County shall not permit or allow, or process applications for land use entitlements for, the use of real property for collective or cooperative cultivation of marijuana for medical purposes.

B. **Prohibition on medical marijuana dispensaries:** Medical marijuana dispensaries are prohibited. The County shall not permit or allow, or process land use entitlements for, the use of real property for a medical marijuana dispensary.

C. These regulations apply during the term of this interim ordinance and any duly adopted extension of this interim ordinance, unless a specific exemption under this ordinance is applicable.

#### **SECTION 5. EXEMPTIONS**

A. This interim ordinance does not prohibit a qualified patient, a patient with an identification card, or a primary caregiver from cultivating up to six mature plants or twelve immature marijuana plants per qualified patient, or a greater number if recommended by a doctor consistent with the patient's needs, within the limits set forth in Health and Safety Code section 11362.77, if the qualified patient or patient with an identification card is cultivating plants only for his or her own personal use, or if the primary caregiver is cultivating plants only for persons for whom he or she personally serves as a primary caregiver and not engaging in collective or cooperative cultivation.

B. This interim ordinance does not prohibit medical marijuana cultivation if the property owner demonstrates to the satisfaction of the Director of Planning that such cultivation had commenced and all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of this initial interim ordinance.

C. This interim ordinance does not prohibit the operation of any medical marijuana dispensary if the property owner demonstrates to the satisfaction of the Director of Planning that such use had commenced and all required County approvals and land use permits had been obtained prior to the date of the adoption of this initial interim ordinance.

#### **SECTION 6. ENFORCEMENT**

Any violation of this interim ordinance is unlawful and a public nuisance. In the event of a violation of this ordinance, the County may, in its discretion, in addition to all other remedies,

take such enforcement action as is authorized under the Monterey County Code and such other enforcement action as is authorized by law.

#### **SECTION 7. NO TAKING OF PROPERTY INTENDED**

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed use of land would effect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

#### **SECTION 8. SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

#### **SECTION 9. EFFECTIVE DATE**

In light of the recitals in this ordinance, the Board declares that this interim ordinance is necessary as an urgency measure for preserving the public health, safety, and welfare. This interim ordinance shall take effect immediately upon adoption for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED this 7th day of July, 2015, by the following vote:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSTAIN: None

ABSENT: None

/s/ Simón Salinas

Simón Salinas

Chair, Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI

Clerk of the Board of Supervisors

By: /s/ Denise Hancock

Deputy

APPROVED AS TO FORM

/s/ Wendy S. Strimling

WENDY S. STRIMLING  
Senior Deputy County Counsel



## ORDINANCE 5256

**AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, EXTENDING INTERIM ORDINANCE NO. 5254 PURSUANT TO GOVERNMENT CODE SECTION 65858, TEMPORARILY PROHIBITING MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE OR COOPERATIVE CULTIVATION OF MARIJUANA, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF REGULATIONS.**

### County Counsel Summary

*This interim ordinance extends Interim Ordinance No. 5254 for 10 months and 15 days, until and through July 5, 2016, as an urgency measure pursuant to Government Code section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of Monterey County. Interim Ordinance No. 5254 was adopted by the Monterey County Board of Supervisors on July 7, 2015 for a 45-day period which ends August 21, 2015. This ordinance extends Interim Ordinance No. 5254 through July 5, 2016, thereby continuing the prohibition on new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana during the term of the ordinance. Interim Ordinance No. 5254, as extended, finds that there is a current and immediate threat to the public health, safety and welfare associated with the collective cultivation, processing, and dispensing of medical marijuana in the absence of specific County land use regulation and that the temporary ban on new medical marijuana dispensaries and collective and cooperative cultivation is necessary to enable the County to study and develop appropriate land use regulations for medical marijuana consistent with state law. As an urgency measure, this interim ordinance requires a four-fifths vote of the Board of Supervisors for adoption and takes effect immediately.*

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

### SECTION 1. FINDINGS AND DECLARATIONS

A. On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 as an urgency measure pursuant to California Government Code section 65858 to prohibit the collective or cooperative cultivation of medical marijuana and medical marijuana dispensaries within the unincorporated area of Monterey County, with limited exemptions, pending the County's study and consideration of regulations. Interim Ordinance No. 5254 is attached hereto as Exhibit 1 and incorporated herein by reference.

B. Interim Ordinance No. 5254 is in effect for 45 days and expires on August 21, 2015, unless extended by law.

C. Government Code section 65858 permits the Board of Supervisors, following notice and public hearing and upon a four-fifths vote, to extend the Interim Ordinance for up to

10 months and 15 days, provided that the Board finds that there is a current and immediate threat to the public health, safety, or welfare, and that the uses that may be allowed or permitted without the Interim Ordinance would result in that threat to public health, safety, or welfare.

D. The Board finds that the collective or cultivation of marijuana and medical marijuana dispensaries continue to pose a threat to public health, safety and welfare and that allowing those uses in the absence of County land use regulations specifically addressing medical marijuana will result in that threat to the public health, safety and welfare. County needs to develop robust regulations that, while remaining consistent with state law, affirm federal law enforcement priorities including preventing such harmful effects as distribution of marijuana to minors, involvement of criminal enterprises, illegal trafficking of drugs, and violence and use of firearms in the cultivation and distribution of marijuana. Regulations are also needed to address the potentially adverse environmental impacts associated with large scale marijuana cultivation.

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

F. The Board of Supervisors' meeting of July 28, 2015 is its last regularly scheduled meeting until August 25, 2015, so the July 28 meeting is the last regular meeting to consider extension of Interim Ordinance No. 5254 before it expires. While staff has begun to discuss development of regulations in the three weeks since adoption of the Interim Ordinance, more time is needed to study and draft regulations, conduct environmental review, and hold public hearings to consider regulations. An extension of the Interim Ordinance for up to 10 months and 15 days is warranted to provide time to study whether, where, to what extent, and under what conditions collective or cooperative cultivation of marijuana and dispensaries of medical marijuana may or may not be permitted as a land use within the County.

G. The Board intends for Interim Ordinance No. 5254 to remain in effect for its full 45-day term, through August 21, 2015, and for this extension to commence on August 22, 2015 and be in effect through July 5, 2016, unless extended pursuant to law.

H. On July 28, 2015, the Board of Supervisors conducted a public hearing on this extension of Interim Ordinance No. 5254. Notice of the public hearing was published at least ten days in advance of the hearing pursuant to Government Code section 65090. Notice of the hearing was published in the *Salinas Californian* and the *Monterey County Weekly* on July 16, 2015.

I. This extension of Interim Ordinance No. 5254 is statutorily exempt from the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety, and welfare.

## SECTION 2. EXTENSION

Based on all of the foregoing findings and declarations, the Board of Supervisors hereby extends Interim Ordinance No. 5254 for 10 months and 15 days, until and through July 5, 2016. All provisions of Interim Ordinance No. 5254, which is attached hereto as Exhibit 1 and incorporated herein by reference, shall remain in full force and effect. In no circumstance shall Interim Ordinance No. 5254, as adopted and hereby extended, be interpreted to sanction any violation of state law or County regulation.

## SECTION 3. EFFECTIVE DATE

Pursuant to the findings and declarations set forth in this interim ordinance and Interim Ordinance No. 5254, the Board declares that this interim ordinance is necessary as an urgency measure for preserving the public health, safety and welfare and that this interim ordinance shall take effect immediately upon adoption for the reasons set forth herein.

PASSED AND ADOPTED this 28 day of July, 2015, by the following vote:

AYES: Supervisors Armenta, Salinas, Phillips, Parker and Potter.

NOES: None

ABSTAIN: None

ABSENT: None

/s/ Simón Salinas

Simón Salinas

Chair, Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI

Clerk of the Board of Supervisors

By: /s/ Denise Hancock

Deputy

APPROVED AS TO FORM

/s/ Wendy S. Strimling

WENDY S. STRIMLING  
Senior Deputy County Counsel

## ORDINANCE 5254

AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, TEMPORARILY PROHIBITING MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE OR COOPERATIVE CULTIVATION OF MEDICAL MARIJUANA, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF REGULATIONS.

### County Counsel Summary

*This interim ordinance is an urgency measure pursuant to Government Code section 65858 to prohibit, on a temporary basis, the establishment of new medical marijuana dispensaries and collective or cooperative cultivation of medical marijuana in the unincorporated area of Monterey County. This ordinance finds that there is a current and immediate threat to the public health, safety and welfare associated with the collective cultivation, processing, and dispensing of medical marijuana in the absence of specific County land use regulation and that the temporary ban on new medical marijuana dispensaries and collective and cooperative cultivation is necessary to enable the County to study and develop appropriate land use regulations for medical marijuana consistent with state law. This ordinance is an interim urgency ordinance that requires a four-fifths vote of the Board of Supervisors for adoption. The ordinance would take effect immediately and would expire 45 days after its adoption unless extended by subsequent action of the Board of Supervisors.*

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 ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may as an urgency measure adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time.

C. County's zoning ordinances, Title 20 and Title 21 of the Monterey County Code, currently do not specifically regulate the use of land or structures for cultivation, processing, or dispensing of medical marijuana. Current County zoning regulations related to indoor and outdoor cultivation of crops and to pharmacies do not adequately address the unique legal, land use, and public health, safety and welfare issues and impacts associated with medical marijuana.

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

E. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing marijuana.

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

G. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Saf. 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. Pursuant to Health and Safety Code section 11362.77(a), a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient. In addition, they may also maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

H. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), held that neither the CUA nor the MMP expressly or impliedly preempt the authority of California counties or cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. The MMP allows cities and counties to adopt local ordinances that regulate the location, operation, or establishment of medical marijuana cooperatives or collectives and to enforce such ordinances. (Health & Saf. Code § 11362.83.)

I. Study of potential land use regulations is urgently needed because the County has received inquiries from collectives and cooperatives that seek to open medical marijuana dispensaries and cultivation facilities within the unincorporated areas of Monterey County,<sup>2</sup> notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such facilities.

J. Without sufficient regulations, standards, procedures and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from the establishment of medical marijuana dispensaries and collective or cooperative cultivation facilities, including but not limited to the following harmful impacts from unregulated dispensaries and collective cultivation:

1. Marijuana dispensaries. Facilities that dispense medical marijuana have been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. The effects are due to such factors as the potential for illegal activity, the presence of large quantities of marijuana and cash at the dispensaries, the presence of weapons, and other factors. Numerous counties and cities have reported harmful effects at dispensaries and surrounding areas, which include an increase in

burglaries, robberies, assaults, illegal sale of drugs, possession of marijuana by unauthorized persons, loitering, smoking marijuana in public places, driving while under the influence of marijuana, decreased property values, and increased traffic. A temporary ban on medical marijuana dispensaries is necessary while County gathers data on the specific impacts of introducing medical marijuana dispensaries within the County and considers the enactment of land use regulations to appropriately address such impacts.

2. Cultivation. Collective or cooperative cultivation of medical marijuana has also been associated with serious harmful effects in the areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. Harmful effects at both outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire danger from grow light systems, extensive energy consumption, and strong offensive odors. A temporary ban on collective or cooperative cultivation of medical marijuana is necessary while the County gathers County-specific data on the specific potential safety threats and environmental impacts associated with large scale cultivation and develops regulations that address these impacts of cultivation. Specific concerns include threats to public safety and law enforcement demands resulting from the high monetary value of the crop and significant impacts to the environment, as evidenced for example by the following:

a. The United States Drug Enforcement Administration reports that each marijuana plant under various planting conditions may yield an average of 236 grams, or about one-half pound, to 846 grams, or nearly two pounds in its lifetime. The "street value" of a single cannabis plant is substantial. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach \$2,000 to \$5,000, and far greater amounts in other states. Thus, a single marijuana plant can yield \$4,000 or more in salable marijuana.

b. According to a recent study of marijuana cultivation in Northern California by staff of California Department of Fish and Wildlife and National Marine Fisheries Services and academic researchers, water demand for marijuana cultivation has the potential to divert excessive portions of streamflow in the studied watersheds, and this diversion is in turn likely to have harmful impacts on state and federally listed salmon and steelhead trout. (*Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds*, PLoS (Public Library of Science), published online March 18, 2015.) The water demand associated with cultivation and its biological impacts are of particular concern in the County which has known water supply constraints, documented aquifer overdraft, and state and federally listed species that could be affected by such water use.

K. As a result of the above factors, a temporary ban on new medical marijuana dispensaries and new collective or cooperative cultivation of medical marijuana is necessary to enable the County study, develop, and consider regulations to protect County residents from these threats to public health, safety and welfare associated with the cultivation, processing, and dispensing of marijuana, in advance of permitting new medical marijuana dispensaries or allowing collective or cooperative cultivation. It is the intent of this interim ordinance to enact a ban that is only temporary in order to provide time for the County to study and develop

appropriate regulations for medical marijuana consistent with the Compassionate Use Act and the Medical Marijuana Program Act.

L. Pursuant to Government Code section 65858, this urgency interim ordinance may have duration of no more than 45 days and may be extended only twice, following notice and public hearing, once by 10 months and 15 days, and subsequently by one year. It is the County's intent that this interim ordinance shall be of no further force and effect after 45 days, unless the Board of Supervisors, following a noticed public hearing, elects to extend the Interim Ordinance pursuant to law.

M. The adoption of this interim ordinance is statutorily exempt from the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

## SECTION 2. APPLICABILITY

This interim ordinance applies in the coastal and non-coastal unincorporated areas of the County and applies in all zoning districts.

## SECTION 3. DEFINITIONS

For purposes of this interim ordinance, the following terms have the definitions set forth below:

A. **Collective or cooperative cultivation.** "Collective or cooperative cultivation" means cultivation by or on behalf of more than one qualified patient, person with an identification card, or a primary caregiver that associate collectively or cooperatively to cultivate marijuana for medical purposes, as referenced in Health and Safety Code section 11362.775.

B. **Cultivation.** "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

C. **Medical marijuana dispensary.** "Medical marijuana dispensary" means any facility or location which is used to make available and/or distribute marijuana for medical purposes to more than one primary caregiver, qualified patient, or patient with an identification card. "Medical marijuana dispensary" includes undertakings that are organized or operated as a collective or cooperative. The term "medical marijuana dispensary" does not include a licensed facility described in Health and Safety Code section 11362.7(d)(1).

D. **Identification card.** "Identification card" means a document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

E. **Person with an identification card.** "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card.

F. **Primary caregiver.** "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

G. **Qualified patient.** "Qualified patient" means a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card issued pursuant to Health and Safety Code sections 11362.7 *et seq.*

#### SECTION 4. REGULATIONS

A. **Prohibition on collective or cooperative cultivation:** The collective or cooperative cultivation of medical marijuana is prohibited. The County shall not permit or allow, or process applications for land use entitlements for, the use of real property for collective or cooperative cultivation of marijuana for medical purposes.

B. **Prohibition on medical marijuana dispensaries:** Medical marijuana dispensaries are prohibited. The County shall not permit or allow, or process land use entitlements for, the use of real property for a medical marijuana dispensary.

C. These regulations apply during the term of this interim ordinance and any duly adopted extension of this interim ordinance, unless a specific exemption under this ordinance is applicable.

#### SECTION 5. EXEMPTIONS

A. This interim ordinance does not prohibit a qualified patient, a patient with an identification card, or a primary caregiver from cultivating up to six mature plants or twelve immature marijuana plants per qualified patient, or a greater number if recommended by a doctor consistent with the patient's needs, within the limits set forth in Health and Safety Code section 11362.77, if the qualified patient or patient with an identification card is cultivating plants only for his or her own personal use, or if the primary caregiver is cultivating plants only for persons for whom he or she personally serves as a primary caregiver and not engaging in collective or cooperative cultivation.

B. This interim ordinance does not prohibit medical marijuana cultivation if the property owner demonstrates to the satisfaction of the Director of Planning that such cultivation had commenced and all required County approvals and land use permits had been obtained or applied for prior to the date of adoption of this initial interim ordinance.

C. This interim ordinance does not prohibit the operation of any medical marijuana dispensary if the property owner demonstrates to the satisfaction of the Director of Planning that such use had commenced and all required County approvals and land use permits had been obtained prior to the date of the adoption of this initial interim ordinance.

#### SECTION 6. ENFORCEMENT

Any violation of this interim ordinance is unlawful and a public nuisance. In the event of a violation of this ordinance, the County may, in its discretion, in addition to all other remedies,



take such enforcement action as is authorized under the Monterey County Code and such other enforcement action as is authorized by law.

#### SECTION 7. NO TAKING OF PROPERTY INTENDED

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed use of land would effect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

#### SECTION 8. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

#### SECTION 9. EFFECTIVE DATE

In light of the recitals in this ordinance, the Board declares that this interim ordinance is necessary as an urgency measure for preserving the public health, safety, and welfare. This interim ordinance shall take effect immediately upon adoption for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED this 7th day of July, 2015, by the following vote:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSTAIN: None

ABSENT: None

/s/ Simón Salinas

Simón Salinas

Chair, Monterey County Board of Supervisors

ATTEST:

GAIL T. BORKOWSKI

Clerk of the Board of Supervisors

By: /s/ Denise Hancock

Deputy

APPROVED AS TO FORM

/s/ Wendy S. Strimling

WENDY S. STRIMLING  
Senior Deputy County Counsel

This page intentionally left blank