

Attachment 3
to
Exhibit A

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ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTERS 7.90 AND 7.95 TO THE MONTEREY COUNTY CODE RELATING TO MEDICAL CANNABIS PERMITS

County Counsel Summary

This ordinance adds Chapters 7.90 and 7.95 to the Monterey County Code to regulate the operation of commercial medical cannabis activities and personal cannabis cultivation in a manner that is consistent with state law. This ordinance requires commercial medical cannabis operations to obtain an annual permit to conduct commercial medical cannabis activities, including cultivation, dispensaries, manufacturing, testing, transportation, and distribution. This permit would be required in addition to any required land use entitlements. The commercial medical cannabis permit would be issued only to the permittee identified on the permit and would not run with the land, and it would require the permittee to meet specified operating requirements including requirements relating to safety, security, waste disposal, storage of pesticides, and packaging and labeling. The ordinance also establishes an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal medical use. The ordinance also contains provisions for enforcement.

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

SECTION 1. Chapter 7.90 is added to the Monterey County Code to read as follows:

Chapter 7.90 COMMERCIAL MEDICAL CANNABIS PERMITS

Sections:

- 7.90.010 Findings and purpose.**
- 7.90.020 Applicability.**
- 7.90.030 Definitions.**
- 7.90.040 Commercial medical cannabis permit required.**
- 7.90.050 Commercial medical cannabis permit application process.**
- 7.90.060 Review of application for commercial medical cannabis permit.**
- 7.90.070 Commercial medical cannabis permit renewal process and grounds for denial.**
- 7.90.080 Fees.**
- 7.90.090 Commercial medical cannabis permit nontransferable.**
- 7.90.100 Commercial medical cannabis operating requirements.**
- 7.90.110 Cultivation, manufacture, waste, and storage requirements.**
- 7.90.120 Packaging and labeling requirements.**
- 7.90.130 Suspension or revocation of commercial medical cannabis permit.**
- 7.90.140 Procedure for suspension or revocation.**
- 7.90.150 Service requirements.**
- 7.90.160 Enforcement and penalties.**

7.90.170 Operative date.

7.90.010 Findings and purpose.

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 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.

C. 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 medical cannabis activity could pose to public safety, public health, and other law enforcement interests.

D. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis 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 cannabis.

E. 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.

F. 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.

G. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*; the “MMRSA”). The MMRSA creates a state licensing program for commercial medical cannabis activities. The MMRSA allows counties and cities to maintain local regulatory authority over medical cannabis. The state will not issue a state license without first receiving authorization by the applicable local jurisdiction.

H. It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety, while protecting the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County and

comply with state law and federal guidelines.

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

J. This draft ordinance provides regulations for the local permitting of medical marijuana operations under specified conditions in the unincorporated areas of the County.

K. To address the added financial burden to the County that may result from this ordinance, including costs associated with processing applications under this ordinance as well as additional law enforcement and other costs, this ordinance requires voter passage of a County tax on commercial medical cannabis activities prior to this ordinance becoming operative.

L. This ordinance, together with the ordinances adding Chapters 20.67 and 21.67 to the Monterey County Code requiring a necessary land use entitlements for all medical cannabis operations, are intended to establish criteria for issuing local permits pursuant to the MMRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

7.90.020 Applicability.

This Chapter applies to the unincorporated area of the County of Monterey.

7.90.030 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter. The definitions in Chapter 20.06 for the coastal zone and Chapter 21.06 for the non-coastal zone shall otherwise apply.

A. “Applicant” means a person eighteen (18) years of age or older who has submitted an application for a permit or renewal of a permit issued pursuant to this Chapter. If the applicant is an entity and not a natural person, applicant shall include all persons having a ten percent (10%) or more financial interest in the entity.

B. “Application” means that form provided by the Appropriate Authority in accordance with this Chapter for the purpose of seeking a commercial medical cannabis permit.

C. “Appropriate Authority” means the Director of Planning or his or her designee.

D. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis”

also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

E. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

F. “Commercial medical cannabis activity” means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product. “Commercial medical cannabis activity” does not include a qualified patient who cultivates one hundred (100) square feet total canopy area or less exclusively for his or her personal use or who possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. “Commercial medical cannabis activity” also does not include a primary caregiver who cultivates one hundred (100) square feet total canopy area or less exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver or who possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

G. “Commercial medical cannabis permit” means a permit issued by the County to an applicant to perform commercial medical cannabis activities under this Chapter.

H. “Commercial medical cannabis operation” means an entity that engages in commercial cannabis activities.

I. “County” means the County of Monterey.

J. “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from dispensary, up to an amount determined by state law, or any of its departments or divisions, to a qualified patient or primary caregiver, or a testing laboratory.

K. “Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the California Government Code;

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or

3. An independent contractor assigned by an organization or entity which

provides hearing officers.

L. “Identification card” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

M. “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

N. “Permittee” means a person issued a County permit under this Chapter.

O. “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

P. “Premises” means the building or greenhouse in which commercial medical cannabis activities are operated and, in addition, any accessory structures and appurtenant areas.

Q. “Primary caregiver” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

R. “Property owner” means the individual or entity who is the record owner of the subject property where commercial medical cannabis activities is located or is proposed to be located.

S. “Qualified patient” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

T. “State” means the state of California.

U. “State license” means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.*

7.90.040 Commercial medical cannabis permit required.

A. Any person who intends to engage in a commercial medical cannabis activity shall obtain a commercial medical cannabis permit for the fixed location in which the commercial medical cannabis activity is to occur.

B. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in a commercial medical cannabis activity in the unincorporated portion of Monterey

County, unless the County has issued such person a permit under this Chapter and the permit is in effect. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

C. The fact that an applicant possesses other types of state or County permits or licenses, shall not exempt the applicant from obtaining a commercial medical cannabis permit under this Chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this Chapter, except that the commercial medical cannabis permit must be consistent with the land use entitlement issued by the County pursuant to Title 20 or Title 21 of the Monterey County Code.

D. The applicant must receive all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code before the County will issue a commercial medical cannabis permit under this Chapter.

E. A commercial medical cannabis permit is not required for the cultivation of medical cannabis by a qualified patient or primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for personal medical use; however, said cultivation requires a personal medical cannabis permit pursuant to Chapter 7.95 of the Monterey County Code.

7.90.050 Commercial medical cannabis permit application process.

A. Each application for the establishment of a commercial medical cannabis permit shall be filed with the Resource Management Agency/Planning on the form and in the manner prescribed by the Director of Planning. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

B. In all cases, the application shall contain, without limitation, the following documentation:

1. All applicants' names, mailing addresses, and if available, e-mail addresses.
2. A 24-hour or nighttime contact phone number.
3. The physical address and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed commercial medical cannabis operation will be located.
4. Proof of ownership of premises, or if the premises on which the commercial medical cannabis operation is to occur is rented or leased, written permission from the property owner containing the property owner(s)' notarized signature that authorizes the tenant or lessee to engage in commercial medical cannabis activities at the site.

5. A “to scale” diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the facility, loading zones and all areas in which medical cannabis and medical cannabis products will be stored, grown or dispensed.

6. If the applicant is a business entity or any form of entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

7. The full name, date of birth, social security number, present address and telephone number for all property owners and for all owners, supervisors, employees, and persons having a ten percent (10%) or more financial interest in the commercial medical cannabis activity that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity.

8. All property owners and all owners, supervisors, employees, and persons having a ten percent (10%) or more financial interest must submit fingerprints and other necessary information for a criminal background check.

9. Written proof (i.e., California driver’s license, California identification card, or certified birth certificate) that all applicants, property owners, supervisors, and employees are eighteen (18) years of age or older.

10. The names and addresses of any other commercial medical cannabis operations currently being operated by the applicant, or that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefore.

11. A full description of the proposed activities and products of the commercial medical cannabis operation.

12. A description of the type of State license(s) that will be required for the proposed operations pursuant to California Business & Professions Code Sections 19300, *et seq.*, including a description of the proposed total canopy area of any cultivation or nursery operation.

13. A detail of the procedures to be utilized at the premises including a description of how chemicals, pesticides and fertilizers will be stored, handled, used and disposed of; and if applicable, manufacturing methods, the transportation process, inventory procedures, and quality control procedures.

14. Proposed hours of operation.

15. A waste disposal plan.

16. If applicable, provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

17. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the State of California and that it shall maintain compliance during the term of the permit.

18. Authorization for the County, its agents and employees to seek verification of the information contained in the application.

19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.

20. Any other information required by the Director of Planning.

7.90.060 Review of application for commercial medical cannabis permit.

A. The Appropriate Authority shall review the application for a commercial medical cannabis permit and associated documents and shall require, if he or she deems necessary, additional information to complete the application. The Appropriate Authority may deem the application incomplete if it does not contain all required information and documents.

B. An application shall not be deemed complete unless all required application fees have been paid.

C. Each commercial medical cannabis permit shall be granted for a one year period and shall expire one (1) year after the date of its issuance.

D. Upon review of a complete application for a commercial medical cannabis permit, the Appropriate Authority shall grant the application if:

1. The proposed commercial medical cannabis activities will comply with all the requirements of the State and the Monterey County Code;

2. The applicant has received all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code;

3. The proposed commercial medical cannabis activities will comply with all provisions of this Chapter; and

4. If applicable, the applicant has obtained a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code.

E. The Appropriate Authority shall deny any application that meets any of the following criteria:

1. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application;
2. Any property owner, supervisor, employee, or persons having a ten percent (10%) or more financial interest in the commercial medical cannabis activity has been convicted of a felony or a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;
3. Any person who is listed on the application is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the California Health and Safety Code;
4. If applicable, the applicant failed to obtain or maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the California Revenue and Taxation Code;
5. Any person who is listed on the application is less than eighteen (18) years of age;
6. The proposed commercial medical cannabis operation does not comply with the provisions of this Chapter or State law; or
7. The applicant has not received all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code.

F. If the Appropriate Authority intends to deny the application, the Appropriate Authority shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 7.90.140 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

7.90.070 Commercial medical cannabis permit renewal process and grounds for denial.

A. Each commercial medical cannabis permit shall expire one (1) year after the date of its issuance. Any permit may be renewed by the Appropriate Authority upon the submission of a renewal application by the permittee and upon determination by the Appropriate Authority that the applicant meets the standards for grant of application pursuant to section 7.90.060. At the time of consideration of a renewal application, the Appropriate Authority shall consider compliance with conditions in the prior term.

B. Any application for renewal shall be filed with the Resource Management Agency/Planning at least thirty (30) calendar days before expiration of the permit. If any of the documentation and information supplied by the applicant pursuant to section 7.90.050 has changed since the grant of the permit, applicant shall submit updated information and documentation with the application for renewal and shall provide such other information as the Director of Planning may require.

C. Any application for renewal shall be denied if:

1. The application is filed fewer than thirty (30) calendar days before its expiration;
2. The permittee fails to conform to the criteria set forth in this Chapter;
3. The permittee is delinquent in payment of County taxes on commercial cannabis activity; or
4. The permit is suspended or revoked at the time of the application.

D. If a renewal application is denied, an applicant may file a new application pursuant to this Chapter.

E. An application for renewal shall be not be deemed complete until all application fees have been paid.

F. If the Appropriate Authority intends to deny the renewal, the Appropriate Authority shall specify in writing the reasons for the denial of the renewal, and notify the permittee that the decision shall become final unless the permittee seeks an appeal pursuant to Section 7.90.140 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

7.90.080 Fees.

The filing of an application for a commercial medical cannabis permit, for renewal of a commercial medical cannabis permit, and appeals shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Permit applicants and permittees are responsible for the costs of inspections, investigations, and any other fee-associated activity established pursuant to this Chapter. Fees, fines, and costs specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time.

7.90.090 Commercial medical cannabis permit nontransferable.

A. A commercial medical cannabis permit does not create any interest of value, is not transferable, and automatically terminates upon transfer of ownership.

B. Whenever any individual, corporation, limited liability company, partnership or other type of business entity permitted under this Chapter sells or transfers all or part of its corporate stock, partnership interest or other business interest in a commercial medical cannabis operation, a new commercial medical cannabis permit shall be obtained pursuant to Section 7.90.050 of this Chapter.

C. A commercial medical cannabis permit is issued to and covers only the permittee identified on the permit with respect to the premises identified on the permit. The commercial medical cannabis permit does not run with the land.

7.90.100 Commercial medical cannabis operating requirements.

A. Throughout the term of the commercial medical cannabis permit, each permittee shall not violate this Chapter and shall comply with all of the following:

1. It shall be a violation of this Chapter for a permittee to cultivate, process, manufacture, test, distribute, transport, deliver, provide or allow to be provided cannabis to any person except those persons who are qualified patients or primary caregivers who are in possession of an identification card, or have a verifiable written recommendation from a licensed physician for medical cannabis.

2. The canopy area of medical cannabis located at any premises shall not exceed the maximum canopy limits set by state law and the limits set forth in County's Use Permit issued pursuant to Title 20 or Title 21 of the Monterey County Code. The commercial medical cannabis permit shall specify the canopy limit allowed by the permit.

3. No cannabis shall be smoked, ingested or otherwise consumed on the premises.

4. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the permittee. No person under the age of eighteen (18) shall be allowed on the premises.

5. There shall not be a physician located in or around any commercial medical cannabis operation at any time for the purpose of evaluating patients for the issuance of a medical marijuana recommendation or card.

6. Each permittee shall conspicuously display its permit on the premises. Each commercial medical cannabis operation that engages in delivery services or in transportation services shall carry a copy of the permit in all vehicles that deliver or transport medical cannabis.

7. Odor prevention devices and techniques, such as a ventilation system with a carbon filter, shall be incorporated to ensure that odors from cannabis are not detectable offsite.

8. No permittee may hold a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, nor may the commercial medical cannabis operation include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed or used on the premises.

9. No medical cannabis or medical cannabis products, or graphics depicting cannabis or cannabis products shall be visible from the exterior of the premises.

10. All medical cannabis and medical cannabis products shall be stored in a secured and locked safe room, safe or vault, and in a manner to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples or immediate sale.

11. Each permittee shall keep accurate records of its commercial medical cannabis activities pursuant to the requirements of Section 19327 of the California Business and Professions Code, as it may be amended.

12. Each permittee shall be responsible and liable for safety and security in and around the commercial medical cannabis operation, and shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft and other crimes. Each permittee shall install and maintain in proper working order, video monitoring equipment capable of providing surveillance of both interior and exterior areas of the permitted establishment. Each permittee shall maintain such surveillance video tapes for a period of at least thirty (30) days and shall make such videotapes available to the County upon demand.

13. Each permittee shall notify the County immediately after discovering any of the following: diversion, theft, loss, or any criminal activity involving the commercial medical cannabis operation; significant discrepancies identified during inventory; or any other breach of security.

14. Each permittee shall provide the Appropriate Authority with the name, telephone number, facsimile number, and e-mail address of a community relations contact to whom the public can provide notice of problems associated with the commercial medical cannabis operation. The permittee shall make a good faith effort to resolve problems without the need for intervention by the County.

15. Any new property owners, supervisors, employees or other persons otherwise engaged in the operation of the commercial medical cannabis operation must submit their information to the Appropriate Authority within ten (10) days prior to their new ownership, employment or engagement, including fingerprints and other necessary information for a criminal background check.

16. No property owner, supervisor, employee, or other persons otherwise engaged in the operation of the commercial medical cannabis operation may have been convicted of a felony or a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47) within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

17. A permittee shall not be delinquent in the payment of all applicable state and County taxes and fees.

18. The property owner(s) who own(s) the premises where the commercial cannabis operation is located must at all times have all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code and the land use entitlements must be operative.

19. When applicable, the permittee must legally hold all required State Licenses under the Medical Marijuana Regulation and Safety Act (Business & Professions Code §§ 19300, *et seq.*), as it may be amended, and under all other applicable state laws.

20. A permittee shall comply with all applicable federal, state and local laws, ordinances and regulations, including without limitation, County building, zoning and health codes.

B. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises for the purpose of observing compliance of the commercial medical cannabis operation with this Section, including access to and inspection of the commercial medical cannabis operation's records, books, accounts, financial data, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination.

C. It is unlawful for any person having any responsibility over a commercial medical cannabis operation to refuse to allow, impede, obstruct, or interfere with an inspection, or the review of the copying of records and monitoring (including recordings) including, but not limited to, the concealment, destruction, and falsification of any recordings or records.

7.90.110 Cultivation, manufacture, waste, and storage requirements.

A. Each permittee must follow all pesticide use requirements of local, state and federal law.

B. Each permittee must maintain all weighing devices in compliance with local, state or federal law and comply with Chapter 7.60 of the Monterey County Code regarding device registration with the County.

C. Each permittee must follow all local, state and federal requirements for waste disposal.

D. In no case shall any hazardous, flammable or explosive substances be used to process or manufacture cannabis products on site.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

F. All food products, food storage facilities, food-related utensils, equipment and materials shall be approved, used, managed and handled in accordance with Sections 113700-114437 of the California Health and Safety Code, and California Retail Food Code. All food products shall be protected from contamination at all times, and all food handlers must be clean, in good health and free from communicable diseases.

G. Baked products (e.g., brownies, bars, cookies, etc.), tinctures, and other non-refrigerated type items may be sold or distributed at a medical cannabis business.

H. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises of the commercial medical cannabis operation for the purpose of observing compliance with this Section.

7.90.120 Packaging and labeling requirements.

Prior to the sale or the delivery of medical cannabis or medical cannabis product the same shall be labeled and in a tamper-evident packaging. Labels and packages shall at least meet all of the following minimum requirements:

- A. Packages and labels shall not be made to be attractive to children.
- B. Product labels shall include the following information displayed in a clear and legible font:
 - 1. Manufacture date and source;
 - 2. The statement “SCHEDULE I CONTROLLED SUBSTANCE”;
 - 3. The statement “KEEP OUT OF REACH OF CHILDREN AND ANIMALS” in bold type face;
 - 4. The statement “FOR MEDICAL USE ONLY”;
 - 5. The statement “THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS”; and
 - 6. The statement “THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION”.

- C. For packages containing only dried flowers, the net weight of the cannabis in the package.
- D. A warning if nuts or other known allergens are used.
- E. List of pharmacologically active ingredients including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.
- F. Clear indication, in bold typeface, that the product contains cannabis.
- G. Identification of the source and date of cultivation and manufacture.
- H. Only generic food names may be used to describe edible cannabis products.
- I. At any time between 8:00 a.m. and 8:00 p.m. and without notice, County officials may enter the premises and inspect the permittee's medical cannabis products for the purpose of observing compliance with this Section.

7.90.130 Suspension or revocation of commercial medical cannabis permit.

Any of the following shall be grounds for suspension or revocation of a commercial medical cannabis permit, based on substantial evidence and following notice and public hearing pursuant to Section 7.90.140 of this Chapter.

- A. Failure to comply with one or more of the terms and conditions of the commercial medical cannabis permit;
- B. The commercial medical cannabis permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;
- C. Any act or omission by a permittee in contravention of the provisions of this Chapter;
- D. Any act or omission by a permittee in contravention of State law, or the Monterey County Code;
- E. Any act or omission by a permittee that results in the suspension or revocation of the applicable use permit issued under Titles 20 or 21 of the Monterey County Code for the commercial medical cannabis activities;
- F. Any act or omission by a permittee that results in the denial, revocation or suspension of that permittee's State License;

G. Failure to pay applicable State or County taxes on commercial cannabis activity;
or

H. Conduct of the commercial medical cannabis operations in a manner that constitutes a nuisance, where the permittee has failed to comply with reasonable conditions to abate the nuisance.

7.90.140 Procedure for suspension or revocation.

A. If the Appropriate Authority determines that grounds for suspension or revocation of the commercial medical cannabis permit exists pursuant to Section 7.90.130 of this Chapter, the Appropriate Authority shall issue a written Notice of Intention to suspend or revoke the permit, as the case may be. The Notice of Intention shall be served on the permittee, as reported on the permit, and on the property owner, as reported on the latest equalized assessment roll. The Notice of Intention shall be served in accordance with the requirements set forth in Section 7.90.150 of this Chapter. The Notice of Intention shall describe the property, the intention to revoke or suspend the permit, the grounds for suspension or revocation, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the permittee and the owner of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the permit should not be suspended or revoked, and shall notify them of the ten (10) day deadline to submit a written request for a hearing.

B. The permittee and owner shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the commercial medical cannabis permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Appropriate Authority may suspend or revoke the permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the Appropriate Authority shall set a date for a hearing to be held within sixty (60) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section 7.90.150 of this Chapter.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the commercial medical cannabis permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. The Hearing Officer may postpone the hearing date upon good cause shown, continue the hearing during the course of the hearing, and make such other procedural orders and rulings as he or she deems appropriate during the course of the hearing.

5. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.

E. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney fees.

F. If neither permittee nor owner, nor their authorized representatives, appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.90.150 Service requirements.

Wherever this Chapter requires the County to serve notice to an applicant, permittee, or property owner such notice shall be given by the Appropriate Authority, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the physical address of the premises on the date of the mailing of notice.

7.90.160 Enforcement and penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of a misdemeanor. No proof of knowledge, intent, or other mental state is required to establish a violation.

B. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapters 1.20 and 1.22 of the Monterey County Code, and any other action authorized by law.

C. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Monterey County Code or otherwise authorized by law. Additionally, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical cannabis operator or persons related thereto, or associated with, the commercial medical cannabis activity.

7.90.170 Operative date.

This Chapter shall become operative only if the ordinance amending Title 21 relating to medical cannabis uses becomes operative and only if the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this Chapter becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

SECTION 2. Chapter 7.95 is added to the Monterey County Code to read as follows:

Chapter 7.95 PERSONAL MEDICAL CANNABIS PERMIT

Sections:

- 7.95.010 Findings and purpose.**
- 7.95.020 Applicability.**
- 7.95.030 Definitions.**
- 7.95.040 Personal medical cannabis permit required.**
- 7.95.050 Personal medical cannabis permit application process.**
- 7.95.060 Review of application for personal medical cannabis permit.**
- 7.95.070 Personal medical cannabis permit renewal process and grounds for denial.**
- 7.95.080 Fees.**
- 7.95.090 Personal medical cannabis permit nontransferable.**
- 7.95.100 Personal medical cannabis cultivation requirements.**
- 7.95.110 Suspension or revocation of personal medical cannabis permit.**
- 7.95.120 Procedure for suspension or revocation.**
- 7.95.130 Service requirements.**
- 7.95.140 Enforcement and penalties.**
- 7.95.150 Operative date.**

7.95.010 Findings and purpose.

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 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.

C. 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 those state or local laws could pose to public safety, public health, and other law enforcement interests.

D. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis 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 cannabis.

E. 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.

F. 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.

G. 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 medical cannabis cultivation.

H. It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety, while protecting the health, safety, and general welfare of the residents and businesses within the unincorporated areas of Monterey County and comply with state law and federal guidelines.

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

J. This draft ordinance provides regulations for the local permitting of personal medical cannabis cultivation in under specified conditions in the unincorporated areas of Monterey County.

K. To address the added financial burden to the County that may result from this ordinance, including costs associated with processing applications under this ordinance as well as additional law enforcement and other costs, this ordinance requires voter passage of a County tax on commercial medical cannabis activities prior to this ordinance becoming operative.

L. This ordinance is intended to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

7.95.020 Applicability.

This Chapter applies to the unincorporated area of the County of Monterey.

7.95.030 Definitions.

The following words and phrases shall have the following meanings when used in this Chapter:

- A. “Applicant” means a person eighteen (18) years of age or older who has submitted an application for a permit or renewal of a permit issued pursuant to this Chapter.
- B. “Application” means that form provided by the Appropriate Authority in accordance with this Chapter for the purpose of seeking a personal medical cannabis permit.
- C. “Appropriate Authority” means the Director of Planning or his or her designee.
- D. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.
- E. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.
- F. “County” means the County of Monterey.
- G. “Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

- 1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the California Government Code;

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or

3. An independent contractor assigned by an organization or entity which provides hearing officers.

H. “Identification card” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

I. “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

J. “Permittee” means a person issued a County permit under this Chapter.

K. “Personal medical cannabis cultivation” means a qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. “Personal medical cannabis cultivation” also includes a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

L. “Personal medical cannabis permit” means a permit issued by the County to a qualified patient or primary caregiver for personal medical cannabis cultivation under this Chapter.

M. “Premises” means the building in which personal medical cannabis cultivation takes place, in addition, any accessory structures and appurtenant areas.

N. “Primary caregiver” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

O. “Property owner” means the individual or entity who is the record owner of the subject property where personal medical cannabis cultivation is located or is proposed to be located.

P. “Qualified patient” has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

Q. “State” means the state of California.

7.95.040 Personal medical cannabis permit required.

A. Any qualified patient or primary caregiver who intends to engage in personal medical cannabis cultivation shall obtain a personal medical cannabis permit for the fixed location in which personal medical cannabis cultivation is to occur.

B. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in personal medical cannabis cultivation in the unincorporated portion of Monterey County, unless the County has issued such person a permit under this Chapter and the permit is in effect.

C. If a qualified patient or primary caregiver proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis, he or she must obtain all necessary land use entitlements as required by Titles 20 and 21 of the Monterey County Code and a commercial cannabis permit pursuant to Chapter 7.90 of the Monterey County Code.

D. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

7.95.050 Personal medical cannabis permit application process.

A. Each application for the establishment of a personal medical cannabis permit shall be filed with the Resource Management Agency/Planning on the form and in the manner prescribed by the Director of Planning. The Appropriate Authority shall be responsible for administering the application process as set forth in this Chapter.

B. In all cases, the application shall contain, without limitation, the following documentation:

1. The applicant's name, mailing address, and if available, e-mail address.
2. A 24-hour or nighttime contact phone number.
3. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card, or certified birth certificate).
4. The physical address and assessor's parcel number(s) (APN or APNs) of the property upon which the proposed cultivation will be located.
5. Proof of ownership of premises, or if the premises on which the cultivation is to occur is rented or leased, written permission from the property owner containing the owner(s)' notarized signature that authorizes the tenant or lessee to cultivate medical cannabis at the site.

6. A site map showing the location of the cultivation.
7. Evidence demonstrating that the cultivation will take place in an area one hundred (100) square feet total canopy area or less, and will not exceed ten (10) feet in height.
8. Such other information as the Director of Planning may require.

7.95.060 Review of application for personal medical cannabis permit.

A. The Appropriate Authority shall review the application for a personal medical cannabis permit and associated documents and shall require, if he or she deems necessary, additional information to complete the application. The Appropriate Authority may deem the application incomplete if it does not contain all required information and documents.

B. An application shall not be deemed complete unless all required application fees have been paid.

C. Each personal medical cannabis permit shall be granted for a one year period and shall expire one (1) year after the date of its issuance.

D. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall grant the application if:

1. The proposed personal medical cannabis cultivation will comply with all laws, regulations and ordinances of the State and the Monterey County Code; and
2. The proposed personal medical cannabis cultivation will comply with all provisions of this Chapter, including but not limited to the personal medical cannabis cultivation requirements set forth in section 7.95.100.

E. Upon review of a complete application for a personal medical cannabis permit, the Appropriate Authority shall deny any application that meets any of the following criteria:

1. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application;
2. The applicant is less than eighteen (18) years of age;
3. The applicant proposes to cultivate more than one hundred (100) square feet total canopy area of cannabis;
4. The proposed personal medical cannabis cultivation does not comply with all laws, regulations and ordinances of the State and the Monterey County Code; or

5. The proposed personal medical cannabis cultivation does not comply with the requirements of this Chapter.

F. If the Appropriate Authority intends to deny the application, the Appropriate Authority shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.070 Personal medical cannabis permit renewal process and grounds for denial.

A. Each personal medical cannabis permit shall expire one (1) year after the date of its issuance. Any permit may be renewed by the Appropriate Authority upon the submission of a renewal application by the permittee and upon determination by the Appropriate Authority that the application meets the standards for grant of application pursuant to section 7.95.060.

B. Any application for renewal shall be filed with the Resource Management Agency/Planning at least thirty (30) calendar days before expiration of the personal medical cannabis permit. If any of the documentation and information supplied by the applicant pursuant to section 7.95.050 has changed since the grant of the permit, applicant shall submit updated information and documentation with the application for renewal and shall provide such other information as the Director of Planning may require.

C. Any application for renewal shall be denied if:

1. The application is filed fewer than thirty (30) calendar days before its expiration;
2. The permittee fails to conform to the criteria set forth in this Chapter; or
3. The personal medical cannabis permit is suspended or revoked at the time of the application.

D. If a renewal application is denied, an applicant may file a new application pursuant to this Chapter.

E. An application shall not be deemed complete unless all required application fees have been paid.

F. If the Appropriate Authority intends to deny the renewal, the Appropriate Authority shall specify in writing the reasons for the denial of the renewal, and notify the permittee that the decision shall become final unless the permittee seeks an appeal pursuant to Section 7.95.120 of this Chapter within ten (10) calendar days of the date of service of the Appropriate Authority's decision. Service of the decision shall be provided in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

7.95.080 Fees.

The filing of an application for a personal medical cannabis permit, for renewal of a personal medical cannabis permit, and appeals shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Permit applicants and permittees are responsible for the costs of inspections, investigations, and any other fee-associated activity established pursuant to this Chapter. Fees, fines, and costs specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time.

7.95.090 Personal medical cannabis permit nontransferable.

A. A personal medical cannabis permit does not create any interest of value and is not transferable.

B. A personal medical cannabis permit is issued to and covers only the qualified patient or primary caregiver identified on the permit with respect to the premises identified on the permit. The personal medical cannabis permit does not run with the land.

7.95.100 Personal medical cannabis cultivation requirements.

Throughout the term of the personal medical cannabis permit, each permittee shall not violate this Chapter and shall comply with all of the following:

A. The personal medical cannabis cultivation shall not exceed one hundred (100) square feet of total canopy area and shall not exceed ten (10) feet in height.

B. No cannabis odors shall be detectable from offsite, and the use of odor prevention devices, such as a ventilation system with a carbon filter, shall be utilized if necessary.

C. No medical cannabis or medical cannabis products shall be visible from the exterior of the premises.

D. Unless fully enclosed within an accessory structure, all personal medical cannabis cultivation shall be contained within a fully enclosed locked fence area and shall maintain the following minimum setbacks from property lines:

1. Front: fifty (50) feet or behind the main structure;
2. Side: thirty (30) feet; and
3. Rear: thirty (30) feet.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid

contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

F. In no case shall any hazardous, flammable, or explosive substances be used in conjunction with medical cannabis on the premises.

G. Grow lights in a residence or a detached accessory building shall not exceed 1200 watts total.

7.95.110 Suspension or revocation of personal medical cannabis permit.

Any of the following shall be grounds for suspension or revocation of a personal medical cannabis permit, based on substantial evidence and following notice and public hearing pursuant to Section 7.95.120 of this Chapter.

A. The personal medical cannabis permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;

B. Any act or omission by a permittee in contravention of the provisions of this Chapter;

C. Any act or omission by a permittee in contravention of State law, or the Monterey County Code;

D. Conduct of the permittee in a manner that constitutes a nuisance, where the permittee has failed to comply with reasonable conditions to abate the nuisance; or

E. Failure to comply with one or more of the terms and conditions of the personal medical cannabis permit.

7.95.120 Procedure for suspension or revocation.

A. If the Appropriate Authority determines that grounds for suspension or revocation of the personal medical cannabis permit exists pursuant to Section 7.95.110 of this Chapter, the Appropriate Authority shall issue a written Notice of Intention to revoke or suspend the permit, as the case may be. The Notice of Intention shall be served on the permittee, as reported on the permit. The Notice of Intention shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter. The Notice of Intention shall describe the property, the intention to revoke or suspend the permit, the grounds for revocation or suspension, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the permittee of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the permit should not be suspended or revoked, and shall notify them of the ten (10) day deadline to submit a written request for a hearing.

B. The permittee shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the

suspension or revocation of the personal medical cannabis permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Appropriate Authority may suspend or revoke the permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the Appropriate Authority shall set a date for a hearing to be held within sixty (60) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section 7.95.130 of this Chapter.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the personal medical cannabis permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. The Hearing Officer may postpone the hearing date upon good cause shown, continue the hearing during the course of the hearing, and make such other procedural orders and rulings as he or she deems appropriate during the course of the hearing.

5. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.

E. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney fees.

F. If neither permittee nor their authorized representatives appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.95.130 Service requirements.

Wherever this Chapter requires the County to serve notice to an applicant or permittee, such notice shall be given by the Appropriate Authority, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the physical address of the premises on the date of the mailing of notice.

7.95.140 Enforcement and penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of a misdemeanor. No proof of knowledge, intent, or other mental state is required to establish a violation.

B. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapters 1.20 and 1.22 of the Monterey County Code, and any other action authorized by law.

C. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Monterey County Code or otherwise authorized by law. Additionally, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical cannabis activity or persons related thereto, or associated with, the commercial medical cannabis activity.

7.95.150 Operative date.

This Chapter shall become operative only if the ordinance amending Title 21 relating to medical cannabis uses becomes operative and only if the Board of Supervisors submits a County tax on commercial medical cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this Chapter becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

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. EFFECTIVE DATE AND OPERATIVE DATE.

A. This ordinance shall become effective on the thirty-first day following adoption, but this ordinance shall not become operative unless the ordinance amending Title 21 relating to medical cannabis uses becomes operative and unless the Board of Supervisors submits a County tax on commercial cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. If this ordinance becomes operative, the operative date shall be the date the County elections official submits the certified statement of the results of the vote on the tax to the Board of Supervisors.

B. As of the operative date of this ordinance, Interim Ordinance No. 5254, as previously amended and extended through February 26, 2017, shall become inoperative in the non-coastal unincorporated area of the County. If the Board of Supervisors does not submit a tax on commercial medical cannabis activity to the voters, the voters do not approve the tax, or the tax is not certified by the County pursuant to Section 15372 of the California Elections Code, Interim Ordinance No. 5254, as previously amended and extended, shall remain in effect through February 26, 2017.

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

AYES:
NOES:
ABSENT:

Chair,
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel

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