

Attachment A

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Attachment A - Discussion

BACKGROUND

In 1996, California became the first state to enact protections for medical marijuana patients and their primary caregivers when the voters approved Proposition 215, known as the Compassionate Use Act. The Act decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. In 2004, Senate Bill 420, known as the Medical Marijuana Program Act ("MMP") became law. The MMP established a voluntary program for identification of qualified patients and caregivers with state issued identification cards, and allowed for the collective and cooperative cultivation and distribution of marijuana.

Despite several states decriminalizing marijuana, marijuana remains illegal under federal law. In August 2013, Deputy Attorney General James Cole issued a memorandum on the subject to U.S. Attorneys around the country (the "Cole Memo"). The Cole Memo makes clear that marijuana remains an illegal (Schedule 1) drug under federal law and identified eight enforcement areas that federal prosecutors should prioritize:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

As it relates to regulatory actions of state and local governments, it is the expectation of the U.S. Department of Justice that "laws authorizing marijuana-related conduct implement strong and effective regulatory and enforcement systems that will address threats to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice." See **Exhibit K** for more detail.

With growing interest and pressures to permit and authorize commercial medical marijuana operations locally, and no specific regulations in place for this industry, the Board of Supervisors called for a temporary ban and preparation of permanent regulations:

- Ordinance 5254. On July 7, 2015, the Board of Supervisors adopted an Interim Ordinance temporarily prohibiting new collective and cooperative operations in Monterey County. This was an initial 45-day moratorium that would expire on August 21, 2015.
- Ordinance 5256. On July 28, 2015, the Board adopted an Interim Ordinance extending Interim Ordinance No. 5254 for 10 months and 15 days until July 5, 2016.
- Ordinance 5265. On February 16 and 26, 2016, the Board considered and then adopted an Interim Ordinance expanding Interim Ordinance No. 5254/5256

exemptions and extending the moratorium term until and through February 26, 2017. Staff, with input from the ad hoc committee, developed the exemption language to remove a barrier to compliance for potential applicants who were cultivating medical marijuana in greenhouses or indoor cultivation sites in compliance with state law, or had made substantial progress toward such cultivation. The draft language makes clear those that come within this new ordinance exemption would still be required to comply with any County ordinance that the County may subsequently adopt relating to medical marijuana. Since adoption, staff has received 11 exceptions requests of which 6 have been approved.

Immediately after adoption of the initial Interim Ordinance, an ad hoc committee of the Board of Supervisors comprised of Supervisors Potter and Phillips was formed. Along with the ad hoc committee, staff began working on the development of permanent regulations with representatives from the Chief Administrator's Office, the Resource Management Agency, the Treasurer/Tax Collector, the Agricultural Commissioner, the Economic Development Department, County Counsel's Office, District Attorney's Office, Sheriff's Office, and the Health Department/Environmental Health Bureau. The initial goal was to complete a draft ordinance before a March 2016 deadline established by State legislation. Staff learned that the moratorium would likely fulfill that requirement. However, the Board determined that with the amount of interest to operate in Monterey County, completing this ordinance was a top priority.

Early efforts included consulting with other jurisdictions to learn about their experiences with marijuana regulation. Staff consulted with Santa Cruz County, Humboldt County, Mendocino County, and Butte County. Most of these jurisdictions described difficult enforcement conditions and sometimes serious environmental, health, and safety impacts associated with unsanctioned marijuana activities. Similarly, the Monterey County Sheriff's Office and District Attorney's Office have had several experiences where marijuana was related to other serious criminal and cartel/gang activities. Reports have included the illegal use and possession of firearms, substandard living conditions, human trafficking, clear-cutting forest areas, diversion of rivers and streams for irrigation, cutting/grading of hillsides, an overall difficulty in finding operations in remote areas and holding those responsible accountable. On the other hand, several medical cannabis collectives have come forward and expressed a desire to responsibly cultivate and dispense medical marijuana for the benefit of their patients.

In October 2015, three months after Monterey County established a moratorium, the State passed the Medical Marijuana Regulation and Safety Act ("MMRSA"). The MMRSA creates a new state licensing program for all commercial medical cannabis activities, including cultivation, manufacturing, dispensing, testing, distribution, and transportation. Under the MMRSA, the State will not issue licenses for commercial cannabis activities in Monterey County without written authorization from the County. The subject ordinances would provide a system for local permitting of commercial medical cannabis operations. State sources have indicated that specific regulations on the licensing program or to issue licenses are not expected until 2018. The MMRSA is attached as **Exhibit J**.

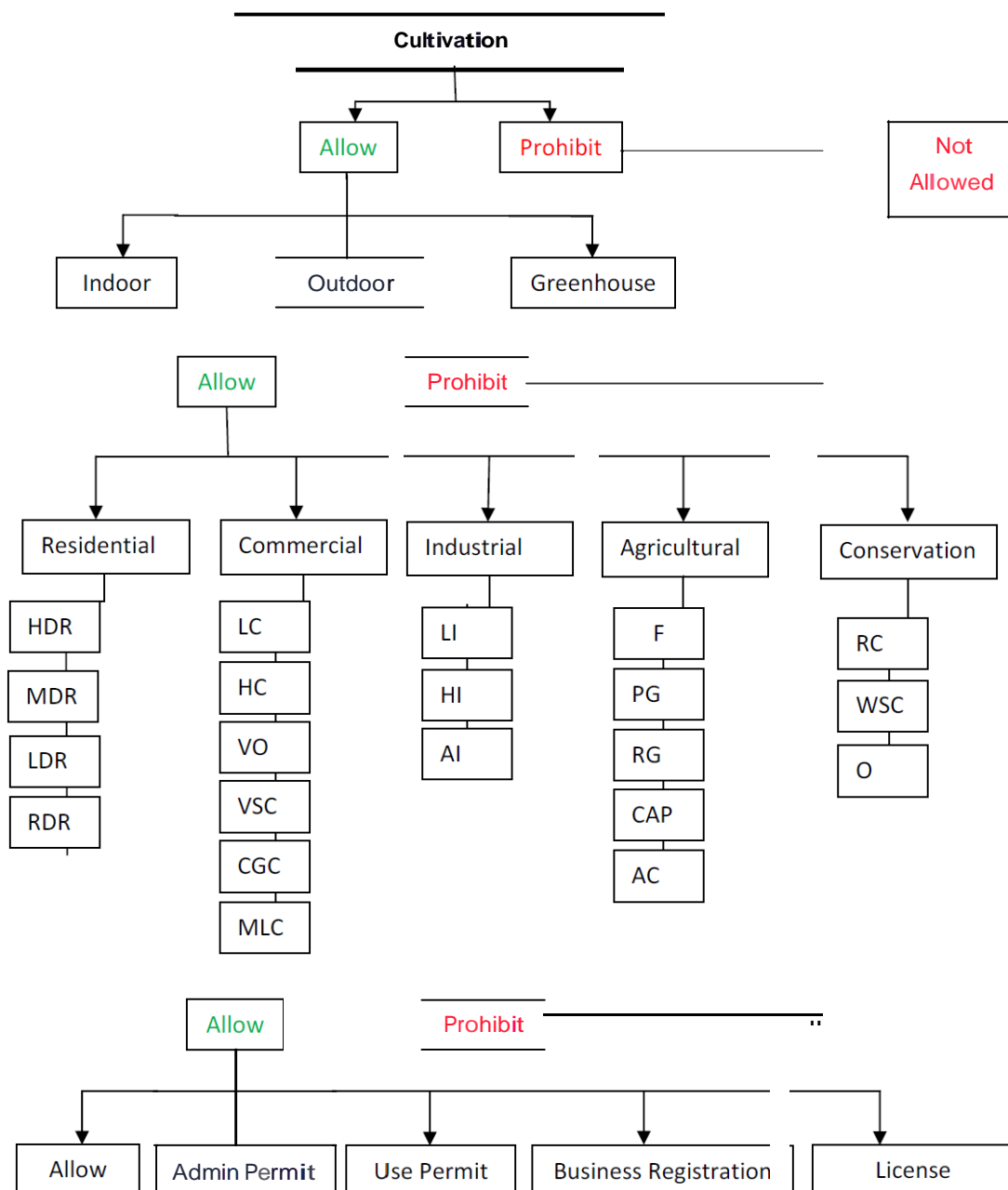
Working closely with the ad hoc committee; staff has developed draft permanent ordinances, which are consistent with the MMRSA and federal enforcement priorities.

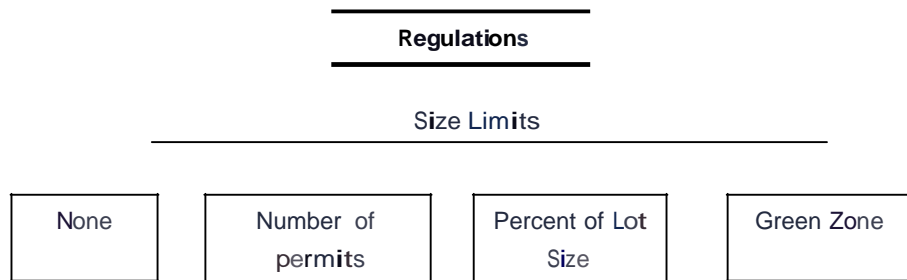
AD HOC

The Committee was presented with the following options:

1. Ban medical marijuana collectives and cooperatives in Monterey County;
2. Continue the previous interpretation of the zoning code with cannabis cultivation being an agricultural practice and dispensaries being similar to a pharmacy; or
3. Develop new regulations specific to the medical marijuana industry.

Having chosen to explore option 3, the question of where and how to permit medical marijuana activities was next on the agenda. RMA staff reviewed uses allowed within each zoning district to identify uses similar to those in the medical marijuana industry, then created an interactive map of the County showing zoning designations, greenhouse locations, and schools. A decision tree was created for cultivation, manufacturing, and dispensing. An example of the decision tree is provided below for reference.





Issues such as security, enforcement, incompatible land uses, conversion of crop lands from food products to cannabis, odor, aesthetics, and the fact that Monterey County could be an appealing place for cultivation with limited demand for dispensing because of our land, climate, and population were all discussed. Upon considering these issues, greenhouses seemed to be a sensible location for cannabis cultivation given the decline of the cut flower industry, the current stock of greenhouse space in the County, the increased ability to manage security of a grow within a building or structure, and the simplicity of enforcement. Manufacturing was viewed as primarily an industrial or commercial process, including extracting oils from the plant and/or infusing the marijuana into prepared foods and products. Dispensaries remained a commercial use similar to a pharmacy. Medical cannabis businesses were primarily considered commercial, industrial, and agricultural uses and not appropriate for residential or conservation zoning districts.

Options for permitting marijuana businesses within the specified zoning districts were considered. Because the medical marijuana use is tied to zoning, land use permits were thought to be appropriate. There was a desire to provide for case-by-case analysis of each application and maintain discretion over where and how a permit may be approved for a medical marijuana use, as opposed to allowing the operations by right. Generally, Use Permits are one time permits that run with the land. Limited term Use Permits would significantly increase workload and cause ongoing and complicated permitting activities. Therefore, an annual permit that was tied to regular inspections was desired in addition to the Use Permit process. Finally, in order to ensure that all local and State permits/licenses are secured and maintained annually, a new business license requirement for cannabis businesses was decided on.

Three ordinances were drafted:

- incorporating permit requirements in the zoning code (Titles 20 and 21 – inland zoning ordinance),
- establishing an annual business permit requirement for medical marijuana operations, and
- creating a new business license registration for medical marijuana business in Monterey County.

County staff and the ad hoc committee reviewed these ordinances before they were released for public review. The drafts were provided the Board on February 9, 2016 with a report on the status of regulation development.

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REGULATIONS

The new state law, and the County’s draft ordinances, provide for distinct processes in the medical marijuana supply chain. State law delineates permit types for the following activities:

1. Cultivation
2. Manufacturing
3. Transportation
4. Distribution
5. Testing; and
6. Dispensing.

Some of these permit types have subcategories that reflect the size or variations in the nature of the operations. Most notably, there are 10 subtypes of cultivation permits; three sizes of cultivation, each of which have three categories based on lighting conditions (outdoor, indoor, or mixed-light or greenhouse) for a total of 9 subtypes. Adding nurseries makes a total of 10 cultivation types. The draft ordinances reflect the licenses types established in State law.

Personal cultivation of medical marijuana for qualified patients or caregivers (cultivation for personal consumption and not for sale or distribution) up to 100 square feet of canopy size would not require a State license, but would require a ministerial permit from the County pursuant to the ordinance adding Chapter 7.95 to the Monterey County Code. Registration or permitting of all cannabis operations, commercial or personal, will make enforcement efforts easier by having a clear distinction between permitted and non-permitted operations.

Zoning Amendments – The draft ordinances amending the zoning codes (inland and coastal) regulate medical cannabis activity from a land use perspective. The ordinances would add new definitions; add “commercial cannabis activity” as a “Use allowed subject to a Use Permit [or Coastal Development Permit in the coastal zone] in each case” in certain zoning districts; and create new chapters (Chapter 21.67 inland, and Chapter 20.67 coastal) providing regulations specific to each cannabis business type. In summary:

- **Cultivation**: Commercial cannabis cultivation and nurseries would be permitted in the Farmland (F) zoning district, if contained within a greenhouse or industrial building legally established prior to January 1, 2016, or within an industrial building located in the Light Industrial (LI), Heavy Industrial (HI), or Agricultural Industrial (AI) zoning districts. No outdoor cultivation would be permitted under the draft ordinance.
- **Manufacturing**: Manufacturing of cannabis would only be permitted within the Heavy Commercial (HC), Light Industrial (LI), Heavy Industrial (HI), and Agricultural Industrial (AI) zoning districts. Manufacturing involving volatile process or chemicals would only be permitted in the Heavy Industrial (HI) zoning district.

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- Transportation/Distribution: Distribution/Transportation facilities would only be permitted in the Heavy Commercial (HC), Light Industrial (LI), Heavy Industrial (HI), and Agricultural Industrial (AI) zoning districts.
- Testing Facilities: Testing facilities would only be permitted in the Heavy Commercial (HC), Light Industrial (LI), Heavy Industrial (HI), and Agricultural Industrial (AI) zoning districts.
- Dispensaries: Dispensaries would only be permitted in the Light Commercial (LC) or Heavy Commercial (HC) zoning districts similar to the way a pharmacy is permitted under the current zoning regulations.

Zoning	Use					
	Cultivation/ Nursery	Manufacture Non Volatile	Manufacture Volatile	Testing	Dispensary	Distribution/ Transport
Farmland (F)	UP*	UP				
Ag Industrial (AI)	UP*	UP		UP		UP
Light Industrial (LI)	UP*	UP		UP		UP
Heavy Industrial (HI)	UP*	UP	UP	UP		UP
Light Commercial (LC)					UP	
Heavy Commercial (HC)		UP			UP	UP

Zoning	Use					
	Cultivation/ Nursery	Manufacture Non-Volatile	Manufacture Volatile	Testing	Dispensary	Distribution/ Transport
Coastal Ag Preserve (CAP)	CDP*	CDP				
Ag Industrial (AI)	CDP*	CDP		CDP		CDP
Light Industrial (LI)	CDP*	CDP		CDP		CDP
Heavy Industrial (HI)	CDP*	CDP	CDP	CDP		CDP
Coastal General Commercial (CGC)					CDP	
Moss Landing Commercial (MLC)		CDP			CDP	

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For the Coastal zone, the same zoning limitations would be applied by drawing a parallel to comparable zoning districts in the inland areas. The following zoning district comparisons are have been made:

INLAND	COASTAL
Farmland (F)	Coastal Agricultural Preserve (CAP)
Light Commercial (LC)	Coastal General Commercial (CGC) Moss Landing Commercial (MLC)
Heavy Commercial (HC)	None
Light Industrial (LI)	Same
Heavy Industrial (HI)	Same
Agricultural Industrial (AI)	Same

The zoning districts where cannabis operations may be permitted are based on uses of a similar character to those already contained within the zoning ordinances. For instance, drug stores, liquor stores, or pharmacies are allowed in Light Commercial and Heavy Commercial zoning districts. Medical marijuana dispensaries are considered a use of a similar intensity to these types of uses; therefore, dispensaries were added to the uses allowed subject to a permit in these zoning districts. As is the case with prescription drugs and alcohol sales, special regulations are warranted for cannabis dispensaries. Requirements of state law, checks and balances for federal enforcement priorities, and environmental considerations were added to the regulations for dispensaries in Chapters 21.67 and 20.67. The same is true of the other types of medical cannabis uses with a notable deviation for cultivation.

The County currently allows agricultural uses in a variety of zoning districts including Medium, Low, and Rural Density Residential, Agricultural, Grazing Lands, and Resource/Watershed Conservation zoning districts. Marijuana cultivation, on a commercial scale, was determined to be incompatible with the purpose of the Residential and Conservation zoning districts and therefore, commercial medical cannabis activities were not added to the uses allowed in these zoning districts.

In the Farmland and Grazing Lands, enforcement and security are a concern. Unlike other crops, marijuana has a high potential for theft and other criminal activity given its high value and the social realities associated with it having been a black market drug for many years. The ability of the Sheriff and other County staff to enforce the medical marijuana regulations is limited due to staffing and funding constraints, particularly in the remote areas of the County. In addition, there is a greater potential of environmental impacts by outdoor cultivation in remote areas of the County with limited access to adequate public services and facilities. Requiring cultivation to be indoors and not within the Grazing Lands is thought to accomplish several objectives for security, enforcement, and environmental protections. More specifically, indoor cultivation can be better secured to deter theft; is less likely to result in illegal water diversion, grading, erosion, tree removal, and other environmental damages; and it simplifies enforcement efforts by limiting areas where cannabis can be cultivated. The ad hoc committee has suggested moving forward with this limited regulatory program now and exploring in more detail the potential for outdoor cultivation and operations in additional zoning districts following this first step.

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In addition to adding uses allowed to certain zoning districts, the draft zoning ordinances add new chapters (21.67 inland, and 20.67 coastal) containing regulations specific to each type of medical cannabis activity and requiring Use Permits or Coastal Development Permits respectively for commercial medical cannabis activities. The regulations contained in the new chapters draw from requirements of state law, federal enforcement priorities, and environmental considerations. Findings required for approving a Use Permit or Coastal Development Permit to allow commercial medical cannabis activities include compliance with the applicable policies, that the use will not result in significant unavoidable impacts to the environment, and that the proposal complies with specific standards set forth in the subject ordinance.

Business Permit – The ordinance adding Chapters 7.90 focuses on operational requirements and inspections for commercial medical cannabis activities. The permits issued under these Chapters would be ministerial in nature and require annual renewal. Annual renewal will provide for the opportunity to ensure ongoing compliance with all applicable local and state regulations, and provide more expeditious path for enforcement activities for operations that are not in compliance. Unlike the Use Permit or Coastal Development Permit, these permits are nontransferable and are issued to the person or business operating the medical cannabis activity and do not run with the land.

Personal Permit – The ordinance adding Chapter 7.95 requires an annual permit for the cultivation of up to 100 square feet of canopy area per parcel on behalf of a qualified patient. This permit is ministerial in nature and would be issued to the qualified patient or their primary caregiver. Ministerial requirements include minimum setbacks from the property lines for outdoor cultivation, a provision for fencing and/or lockable doors and gates, and requirements for the adequate storage of pesticides and fertilizers. Personal cannabis permits will provide permit holders with a clear and quick protection from investigations stemming from Sheriff, Health, or Code compliance complaints.

Business License - The ordinance previously released that required a business license for commercial cannabis businesses will be considered separately at a later date. The tax measure discussed below is a general tax on the privilege of conducting a commercial cannabis business in Monterey County. A Business license program would aid in collection of taxes. The Treasurer/Tax Collector, in coordination with the Office of County Counsel has been drafting an updated business license ordinance that will be brought forward to the Board of Supervisors for separate consideration at a future meeting date.

Taxation - Staff has also drafted an ordinance imposing a general tax on commercial cannabis activities in Monterey County **Exhibit I**. The ordinance adds Chapter 7.100 to Title 7 of the Monterey County Code imposing a business tax on all commercial cannabis activities including medical and nonmedical cannabis if nonmedical cannabis is approved by the voters.

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The tax would benefit the County General Fund for general government purposes and therefore only require a simple majority vote. It is a tax on the privilege to conduct a commercial cannabis business in the unincorporated areas of the County and will likely be collected and tracked in connection with a business license but could be levied based on the annual commercial cannabis permit; a business license ordinance has been drafted and will be moving forward for consideration separate from the medical marijuana regulations. The tax rates established in the ordinance are described in the summary below and are based on direction from the ad hoc committee. The ordinance has been written to enable taxation of both medical and nonmedical cannabis should the Adult Use initiative pass in the fall or nonmedical use otherwise become legal under state law. For the ordinance to be on the ballot, it must have two readings at the Board and be adopted prior to the Board's August recess. The ordinance has undergone review by the Treasurer-Tax Collector, the County's consultant HdL, and County Counsel.

The rate of the tax has been set based on direction of the ad hoc committee from the May 12, 2016 ad hoc committee meeting to include:

- For cultivation excluding nurseries: \$15 minimum to \$25 maximum per square foot of permitted canopy area.
- For nurseries: \$2 minimum to \$5 maximum per square foot of permitted canopy area
- For all other commercial cannabis businesses: 5% minimum to 10% maximum of gross receipts.

All taxes will begin at the minimum rate, and after a three year period, will automatically increase on an annual basis until the maximum rate is reached. Once the maximum rate is reached, the tax on cultivation, including nurseries, will be adjusted annually based on the consumer price index (CPI) score for the San Francisco-Oakland-San Jose area.

Example of Implementation – Year by Year			
	Cultivation	Nurseries	All Other Cannabis Business
Year 1 (1/1/2017)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 2 (7/1/2018)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 3 (7/1/2019)	\$15/sq. ft.	\$2/sq. ft.	5% Gross Receipts
Year 4 (7/1/2020)	\$20/sq. ft.	\$3.50/sq. ft.	7.5% Gross Receipts
Year 5 (7/1/2021)	\$25/sq. ft.	\$5/sq. ft.	10% Gross Receipts
Year 6 (7/1/2022)	\$25/sq. ft. + CPI	\$5/sq. ft. + CPI	10% Gross Receipts (No CPI)
Year 7 Onward	Prior Year + CPI	Prior Year + CPI	10% Gross Receipts (No CPI)

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To adopt the tax, the following steps are needed:

- 1) Adoption of the tax ordinance which includes the type of tax, rate of tax, and method of collection.
- 2) Adoption of a resolution by two-thirds vote of the Board of Supervisors to present the tax to the voters. The resolution will contain the proposed “ballot question” language.
- 3) For a general tax, approval by a majority of the voters at the election.

If the Board votes to submit the tax to the voters, the ballot itself will contain a “ballot question,” which is limited to 75 words. The question is currently being drafted by the ad hoc committee, and will be brought forward for full Board approval on July 19, 2016. If County requests, the text of the tax ordinance can be printed in the Voter Guide.

Fees - Staff has been working with a consultant from HdL Companies to identify appropriate permit fees for the maximum possible recovery of County costs associated with permitting medical cannabis activities. Fees can only be charged for the costs of processing and enforcing the permit. The ordinances will result indirectly in other costs to the County that cannot be recouped from permit fees, such as law enforcement and code enforcement costs resulting from unpermitted marijuana activity; such enforcement efforts are expected to increase the workload of Sheriff, County Counsel, District Attorney, and RMA code enforcement staff. Staff anticipates the need for additional resources and revenue to adequately enforce against illegal activities and will recommend that the Board make the ordinances conditional on the passing of a commercial cannabis tax measure to be approved by the voters. In conjunction with the ordinances, staff intends to present a commercial cannabis tax measure to the Board of Supervisors, who will decide whether to submit the tax to the voters.

With the operative date of the ordinance tied to the certification of a vote on the tax measure, completion of fee schedules establishing permit fees for cannabis permit applications has been delayed to August or September of this year. Despite the delay, Staff is still actively coordinating with HdL Companies consulting services to draft a fiscal report and to recommend appropriate fees for permits to the Board ad hoc committee for recommendation to the full Board of Supervisors. Staff will bring amended fee schedules and the fiscal analysis forward at a later date but prior to the operative date of the ordinances.

Outreach efforts

Following release of the draft ordinances on February 9, 2016, RMA staff held three public meetings to review and discuss the draft ordinances as written at that time. The meetings were held on:

- February 16, 2016 in Salinas;
- March 7, 2016 in Bradley; and
- March 17, 2016 in Salinas.

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The majority of attendees at these meetings supported permitting medical marijuana businesses in Monterey County. Most of the comments received suggested that the draft ordinances were too restrictive. Some were in support of the ordinance and the pilot program concept. For the sake of discussion, staff attempted to categorize public comments on the draft ordinances at the time into four categories. Those categories include:

- Comments from the public regarding existing medical marijuana operations in Monterey County that desires a path to compliance;
- Comments from the public on the draft ordinance seeking fundamental changes to the draft ordinance for permitting new medical marijuana operations;
- Comments from the public on the draft ordinance that would improve on or clarify the draft ordinances without requiring a fundamental change; and
- Comments from the public in support of the draft ordinance limitations and expressing concerns regarding impacts of medical marijuana operations on surrounding neighborhoods and the environment.

Some of the issues raised in the public meetings overlap these four categories. For instance, a desire to increase limits on personal grows, which can be done without permits from 100 square feet to 500 square feet consistent with the State law. Another issued raised is that the County's draft ordinances do not provide variety for appellations, a legally defined and protected geographical indication used to identify where something is grown similar to branding that is done in the wine industry. The new State law recognizes and does provide for appellations.

Existing Operations: Many of the attendees of the public meetings indicated that there is collective and cooperative cultivation, manufacturing, testing, and dispensing in Monterey County right now without incident. Estimates by the public indicated that there may be up to 250 existing operations. Many of these operators have been here for years and are part of our local community. Comments were provided that these existing operations tend to be small in scale (specialty or boutique size) with a focus on quality rather than quantity. The draft ordinances would make many of these operations non-compliant because of their location within zoning districts that have not been included in the draft ordinance (Permanent Grazing, Rural Grazing, Rural Density Residential, and Resource Conservation), or because they are growing outdoors and could not build a new greenhouse given constraints in the draft ordinance, which require location within a greenhouses that existed prior to January 1, 2016. There is a strong desire to provide a path to compliance for existing, local, marijuana operations that have not been a nuisance in the community.

At this time, the actual number and location of such operations is unknown. The standing of operations within a neighborhood and the legality of those operations is also unknown. Retroactively proving that a collective or cooperative was operating in compliance with applicable laws prior to July 7, 2015 can be problematic. Denial criteria for operations causing

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a nuisance can also be problematic. On the other hand, not approving some of these operations could lead to difficult enforcement issues for the County. A summary of specific issues unique to existing operations (as the ordinances were drafted at the time) raised in the public meetings include:

- Permit limits are too low to accommodate existing operations. If permit limits remain, a local preference policy should be considered.
- Allow outdoor grows or allow construction of new greenhouses or hoop houses as a path to compliance. Outdoor grows have fewer greenhouse gas emissions and less need for pesticides. In addition, plants grown outdoors are often used in the manufacturing process.
- Expand the uses allowed in the Permanent Grazing, Rural Grazing, Resource Conservation, and Rural Density Residential zoning districts. The restrictions in the draft ordinances will force many small, local operations to remain underground or go out of business.
- Allow manufacturing with cultivation and recognize existing manufacturing operations in the same zoning districts.
- Provide a special permit for existing operations, not subject to the permit limits (a grandfathering program).
- Allow limited permits within a region or appellation.
- Increase the ratio of manufacturing, distribution, and testing permits to accommodate a more realistic ratio of these uses to cultivation.
- Clarify if multiple operations will be permitted on one property. Many of the greenhouses existing in Monterey County have the infrastructure and space to support multiple cultivation and manufacturing operations; and
- Consider a competitive review criteria rather than a first come, first served approach.

Concerned about impacts: Some residents expressed support for a pilot program with limited permitting and no outdoor cultivation. A few of these residents have also expressed fear of retaliation for attending meetings and speaking out against nearby cannabis operations. They have concerns for the impacts of neighboring operations on rural residences, particularly with young children, and concerns for safety and security.

Planning Commission Workshop: Information on the outreach efforts were presented to the Planning Commission at a workshop on March 30, 2016. At that meeting, the Planning Commission heard testimony and provided comments/questions for staff to consider. Below is a summary of the feedback from the Planning Commission followed by a discussion of how that feedback was addressed:

- Comment 1: Do we need a business license and a business permit? Is there value added by requiring a business license? Can it be contained within the business permit or tied to the tax?

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- *Discussion:* The Business license ordinance has been separated from the draft medical marijuana regulations under consideration at this time and may be considered separately. While the tax can be tied to the business license, the tax can also be tied to the cannabis permit ordinance.
- Comment 2: How do the draft ordinances differ from state law? It was suggested that the ordinances mimic state law. Justify where there is variation in the local ordinance.
 - *Discussion:* In general, the ordinances are consistent with state law and require operations to comply with state law. The County has added more restrictive regulatory requirements that are not a part of state law to protect environmental resources and to assist with efficient enforcement at the local level. The draft ordinances are more restrictive than the state law regarding personal cultivation. State law exempts personal cultivation of up to 100 square feet by a qualified patient or up to 500 square feet by a primary caregiver cultivating on behalf of five qualified patients, from needing to obtain a state license. The County ordinance would only allow cultivation of up to 100 square feet of canopy area for personal use with a ministerial permit pursuant to Chapter 7.95. Personal cultivation of up to 100 square feet would be exempt from a Use Permit or Coastal Development Permit but would require a personal medical cannabis permit. The reasons for this stricter approach to personal cultivation include:
 - Enforceability – The Sheriff’s Office, Code Enforcement, and other County staff will have information readily available regarding the legality of marijuana cultivation at a given site.
 - Avoid proliferation of small grows – With significant new regulations and taxes looming, it is likely that the industry will adapt to the new oversight. Without controls on personal cultivation, the collective or cooperative model can continue to operate in a grey area albeit at a smaller level. The significant regulatory system and new taxes on commercial size operations would likely significantly increase the attractiveness of smaller unregulated and untaxed grows resulting in unknown impacts on water, neighborhood character, and the environment.
 - Provide some minimal controls – Establishing a ministerial permit requirement for personal cultivation will provide some ability to minimize impacts of personal cultivation on neighborhoods and the environment and provide some measure of enforceability.
- Comment 3: How are proposed regulations consistent with General Plan policies and Right to Farm laws?
 - *Discussion:* As drafted, the medical cannabis regulations have been found to be consistent with the 2010 General Plan. Cannabis cultivation is generally

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considered an agricultural use, although it does not qualify as a “routine and ongoing” agricultural use because, in part, it is an illegal substance under federal law. A detailed consistency analysis is provided in the Negative Declaration. Local jurisdictions throughout the State have been grappling with the applicability of the right to farm law for cannabis cultivation. The current thinking is that the right to farm statute is not applicable to cannabis cultivation, or alternately it will not limit local regulatory authority. The MMRSA does not declare cannabis to be an agricultural product for all purposes. The relevant language is found in Health and Safety Code Section 11362.777(a), and merely provides that “[f]or purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code [i.e., the MMRSA], medical cannabis is an agricultural product.” The statutory right to farm is found elsewhere at Civil Code section 3482.5, and the deliberately limited language of the MMRSA would most likely not prevent a court or local jurisdiction from treating marijuana differently under these wholly unrelated statutes. Additionally, Civil Code Section 3482.5 merely protects qualifying activities from being deemed a “nuisance.” The County’s police power is not limited to regulating nuisances. Consequently, even if a cultivator can demonstrate that they are not a “nuisance,” this will not entitle them to special treatment under otherwise applicable enforcement.

- Comment 4: Regulations should encourage compliance for the industry. Permit limits and zoning limits may encourage violations of regulations.
 - *Discussion*: Permit limits have been removed from the draft ordinances. Zoning limits have remained and additional land use standards have been added as a means of directing commercial medical cannabis activities to areas and zoning districts that already accommodate uses of a similar character and protect neighborhoods from potentially incompatible uses. In an attempt to provide an opportunity for the industry to bring operations into compliance with the contemplated ordinances, the proposed zoning ordinances provide opportunity for multiple operations on one property. Allowing multiple operators on one property provides the opportunity for the industry to find and lease space in compliance with draft regulations. However, given the way that the state law is written, state regulations in the future may limit the ability to have multiple operations on one property.
- Comment 5: Regulations should identify desired outcomes. Include levels of permitting that direct operations where appropriate with a simplified permitting and require Use Permits in less desirable locations. Permits can be considered on a case by case basis through permitting process to determine site suitability rather than restricting locations by zoning districts, outdoor cultivation prohibitions, and permit limits.

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- *Discussion:* At a policy level, desired outcomes include protection of the environment and neighborhoods from potentially incompatible uses while providing access to medical cannabis for seriously ill Californians. Another policy level question is: does the County of Monterey want to become a major exporter of cannabis? The draft ordinances are intended to strike a balance between providing opportunities for the medical cannabis industry while providing limitations on how and where cannabis activities can occur. Limitations protect environmental resources, neighborhood character, and County resources needed for oversight of the new regulations. Staff has considered options for encouraging desirable outcomes through an escalating permit process; however, many of the uses of a similar nature to those proposed already require public hearings and Planning Commission review. Applications for commercial medical cannabis activities are expected to be elevated beyond a staff level or Zoning Administrator level approval, and are likely to end up at the Planning Commission on appeal; hence, the ordinance designates the Planning Commission as the appropriate authority to hear applications for use permits and coastal development permits for commercial medical cannabis activities. The Planning Commission decisions would be appealable to the Board of Supervisors.
- Comment 6: Proposed personal cultivation setbacks do not seem feasible.
 - *Discussion:* The draft ordinances have been updated to include a new personal medical cannabis permit requirement by adding a new Chapter 7.95 to the Monterey County Code. This ministerial permit will provide County staff with the ability to apply setback requirements and security provisions for personal cultivation in order to protect neighborhood character, minimize environmental impacts, and aid in enforcement efforts.
- Comment 7: Do we want to restrict signage and on dispensaries?
 - *Discussion:* The draft ordinances have been revised and signage and appearance restrictions have been deleted. Signage will be considered based on existing sign regulations contained in the zoning ordinances.

Updates: In response to public comment and Planning Commission feedback, staff worked with the ad hoc committee to prepare a second draft of the ordinances. Below is a summary of changes made to the ordinances based on that feedback:

- Eliminate limits on the number of permits, thus alleviating the need for a competitive review process or fixed ratio of manufacturing, distribution, testing, dispensary, and cultivation permits.
- Allow non-volatile manufacturing with cultivation.
- Allow multiple operators on one property subject to future State regulations and limits.

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- Add land use standards governing issuance of use permits and coastal development permits.
- Consider a business license ordinance by separate action; no longer part of the marijuana regulations.
- Greater focus on requirements and process provided in state law and compliance with federal enforcement priorities;
- Clarified permit requirements for personal cultivation; and
- Removed signage restrictions in favor of the general sign regulations.

In addition, since the release of the updated draft ordinances with the Initial Study on May 20, 2016, staff has made some minor revisions to the ordinances. These revisions include:

- Adding security requirements to each type of medical cannabis activity. The previous draft only required specific security measures for dispensaries;
- Clarifying that on-site security personnel are not allowed to carry lethal weapons for security reasons. The previous draft completely prohibited the possession of firearms at commercial medical cannabis sites. This complete ban is preempted by state law;
- Revising the implementation period of the ordinance to clarify that the ordinance will not become operative unless the Board of Supervisors submits a County tax on cannabis activity to the voters, the voters approve the tax, and the tax is certified by the County.

The previous draft ordinances provided the opportunity to apply for permits in advance of the election results with those applications becoming void if the measure does not pass;

- Clarifying that if the Title 21 ordinance becomes operative, the Interim Ordinance shall become inoperative in the inland unincorporated area of the County as of the operative date of the Title 21 ordinance; and
- Clarifying that all property owners, employees, and operators must meet background check requirements of Chapter 7.90 and adding detail regarding criminal history that would disqualify an applicant for a permit, or would be grounds to revoke a permit from a permittee. The previous draft was unclear regarding the need for a background check on new property owners after the business is operating.
- Clarify that cultivation is limited to existing facilities, including greenhouses and warehouses and excluding hoop houses, within the industrial zoning districts. To meet these criteria, documentation must be provided that demonstrates the greenhouse or warehouse was built prior to January 1, 2016.

PLANNING COMMISSION RECOMMENDATION

On June 22 and June 29, 2016 the Monterey County Planning Commission considered the draft ordinances and adopted a resolution recommending that the Board of Supervisors **not** adopt the ordinances as drafted. The Planning Commission identified 20 fundamental issue/ideas that they felt should be address prior to the adoption of any ordinances. In general the Planning

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Commission considered the draft ordinances too restrictive, inequitable, and insufficient to address the illegal black market. The Planning Commission's recommendations are summarized below:

- Do not require permits for personal cultivation (Chapter 7.95)
- Simplify the regulations and stick with the traditional Use Permit process as much as possible as the mechanism to regulate these uses.
- Allow consideration of applications (Use/Coastal Development Permit) in all agricultural zones (outdoor or indoor, new or existing structures). This includes farmland, grazing and conservation zones (F, PG, RG, AP, CAP, WSC).
- Clearly state that:
 - Medical marijuana cultivation is not a routine and ongoing agricultural use (not exempt from policies);
 - Medical marijuana is not Coastal Dependant (Coastal Commission staff letter);
 - Adopt permit fees to recover costs rather than supplementing with tax revenue;
 - Consider allowing on-site Agricultural processing (small scale, low impact, non-volatile manufacturing of medical cannabis products);
 - Clarify that these codes encourage multiple operations on one property;
 - Alert applicants to potential changes and restrictions due to State regulations; and,
 - Relax background check requirements for employees.

The Planning Commission resolution is attached (**Exhibit B**) for the Board to consider. It is in the discretion of the Board of Supervisors to approve, modify, or remand the ordinance back to the Planning Commission for revision. Remanding the ordinance back to the Planning Commission would likely result in significant edits to the draft ordinance and require revision and recirculation of the draft ordinances and environmental documents. With this option, the ordinances would not be adopted prior to the November election although the Board could still move forward with a proposed tax measure related to an unknown permitting structure. Some modifications suggested by the Planning Commission would require only minimal edits and clarifications and could be incorporated in the draft ordinances without significant delays in the time.

Ad Hoc Consideration: On June 30, 2016, staff presented the Planning Commission recommendations to the Board ad hoc committee. After considering the suggested revisions, the Board ad hoc committee suggested incorporating a statement that cannabis cultivation is not a routine and ongoing agricultural activity as that term is defined in the 2010 General Plan (see Item 4 of the Planning Commission Resolution) and agreed to consider permit fees for the recovery of costs associated with permitting activities consistent with item numbers 6 and 7 of the Planning Commission Resolution.

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Staff added language stating that cannabis cultivation is not a routine and ongoing agricultural activity to the Applicability section on medical cannabis cultivation within the draft ordinance (Section 21.67.050.A). This is done in order to establish a policy statement for operation with General Plan exempting Routine and On-Going Agriculture from certain policies, such as; OS-5.5 (native vegetation), OS-10.8 (air quality), and S-2.3 (floodplain).

ORDINANCE CONSIDERATION

California Government Code contains two different legal requirements for the consideration of ordinances. Ordinances amending zoning regulations must be reviewed by the Planning Commission and can be subsequently adopted at a regularly scheduled noticed public hearing before the Board of Supervisors. The zoning ordinances (Title 20 and 21) have been reviewed by the Planning Commission and their recommendation is discussed above. The Board of Supervisors can consider adoption of the Negative Declaration, the ordinance amending Title 21 (inland zoning), and a resolution of intent to amend Title 20 (coastal zoning) at the hearing on July 12, 2016.

The non-zoning ordinances adding Chapters 7.90, 7.95, and 7.100 must be introduced and set for hearing to consider adoption at least five days after they are introduced. The Board can consider these ordinances on July 12, 2016 at the noticed public hearing but must set a later date for consideration of adoption of these ordinances (July 19, 2016).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An initial study analyzing the environmental effects of the draft regulations was prepared and circulated for public comment from May 20, 2016 through June 21, 2016 (**Exhibit D**). The Initial study found that as drafted, approval of the ordinance would have a less than significant impact on the environment and a Negative Declaration was prepared. Several comments were received during the public comment period. Many of the comments received were aimed at the policy direction in the draft regulations and not the adequacy of the environmental review.

The most substantive comments on the ordinance came from the California Coastal Commission (CCC) staff. CCC staff suggested that commercial cannabis activity is not a “coastal-dependant industry” which would limit commercial cannabis opportunities in the North County Coastal area including the Moss Landing Community. The Moss Landing Community Plan designates industry in Moss Landing as “coastal dependent”. The edits suggested by the CCC staff would therefore not allow commercial medical cannabis activities in the industrial zone in Moss Landing.

Coastal Dependent Development or Use is defined in the Coastal Act as: *referring to a development or land use which requires a site on or adjacent to the sea in order to be able to function at all.*” (Section 30101 of the Coastal Act). Article 5, Section 30241 of the Coastal Act (Land Resources), states: *“The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy...”* Staff

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interprets that this would include cultivation (indoor or outdoor) as well as manufacturing. As such, and since Coastal staff determined marijuana to be an agricultural crop, staff finds that marijuana is also coastal dependant or at least coastal related.

The Board ad hoc committee considered the comments from CCC staff and has recommended moving forward with the ordinance as drafted and working with the Coastal Commission staff to address concerns through the certification process. In accordance with the committee and Planning Commission direction, staff has included a policy statement in the ordinances that marijuana is an agricultural commodity. However, uses related to this commodity are not Routine and On-Going Agriculture as established in the 2010 General Plan. This policy statement means that marijuana activities would not be exempt from certain General plan policies as other agricultural operations are.

RECOMMENDATION

Staff and the ad hoc committee on medical marijuana recommend that the Board of Supervisors:

1. Adopt the Negative Declaration
2. Adopt the ordinance amending Title 21 (Inland zoning)
3. Adopt a Resolution of Intent to amend Title 20 (Coastal zoning) and direct staff to submit to the California Coastal Commission for certification; and
Introduce, Waive Reading, and set July 19, 2016 at 10:30 am as the date and time to consider adoption of:
 4. An Ordinance adding Title 7.90 (Commercial medical cannabis permits)
 5. An Ordinance adding Title 7.95 (Personal medical cannabis permits); and
 6. An Ordinance adding Title 7.100 (Commercial cannabis business tax)

At the July 19, 2016 hearing, staff will also provide a Resolution for consideration by the Board of Supervisors directing the Elections Department to submit the tax measure to the voters on the November 2016 General Election ballot.