

**Before the Board of Supervisor in and for the
County of Monterey, State of California**

Resolution No. 16-210**REF160042/Commercial Medical Cannabis
(Marijuana) Ordinances**

Resolution of the Monterey County Board of
Supervisors to:

- a) Adopt the Negative Declaration;
- b) Adopt a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis (marijuana) activities in the coastal zone of unincorporated Monterey County;
- c) Certify that the amendment is intended to be carried out in a manner fully in conformity with the Coastal Act; and
- d) Direct staff to transmit the proposed ordinance to the California Coastal Commission for certification.....

The proposed amendments to Monterey County Coastal Implementation Plan, Part 1, (Title 20 of the Monterey County Code) creating regulations for commercial medical cannabis (marijuana) activities in the unincorporated coastal areas of Monterey County came before the Monterey County Board of Supervisors at a duly noticed public hearing on July 12, 2016. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides the following:

I. RECITALS

1. 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 Substance Act.
2. 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.
3. 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.

4. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code § 11362.5, “CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use has been recommended by a physician.
5. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7-11362.83, “MMP”), became law to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers.
6. On July 7, 2015, the Board of Supervisors adopted Interim Ordinance No. 5254 to prohibit the collective or cooperative cultivation of medical cannabis (marijuana) and medical marijuana dispensaries within the unincorporated area of Monterey County, with limited exemptions, pending the County’s study and consideration of regulations. The County has been studying and considering draft regulations for medical cannabis activities since the adoption of this Interim Ordinance.
7. On July 28, 2015, the Board of Supervisors adopted Interim Ordinance No. 5256 to extend Interim Ordinance No. 5254 by 10 months and 15 days.
8. 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.
9. The ordinances 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.
10. On February 9, 2016, preliminary draft ordinances were provided to the Board of Supervisors with a status report on the progress of medical cannabis regulations.
11. On February 16, 2016 in Salinas, March 7, 2016 in Bradley, and March 17, 2016 again in Salinas, staff conducted public meetings to gather public feedback on comments on the draft ordinances.
12. On February 26, 2016, the Board of Supervisors adopted Interim Ordinance No. 5265 to amend Interim Ordinance No. 5254 to expand the exemptions and to extend Interim Ordinance No. 5254, as amended, until and through February 26, 2017. Interim Ordinance No. 5265 is in effect until February 26, 2017, unless the Board by ordinance terminates it earlier.
13. Staff, working with an ad hoc committee of the Board of Supervisors, drafted ordinances regulating medical cannabis activities with the intent to accommodate the needs of seriously ill Californians and protect the health, safety, and general welfare of the

residents and businesses within the unincorporated areas of Monterey County and to comply with state law and federal guidelines.

14. On March 30, 2016, the Planning Commission conducted a public workshop to consider the draft ordinances and provide direction to staff.
15. After considering feedback from the public and the Planning Commission, staff prepared updated draft ordinances. The updated draft ordinances include:
 - a. An ordinance amending Title 21 of the Monterey County Code;
 - b. An ordinance amending Title 20, the Coastal Implementation Plan Part 1 of the Monterey County certified Local Coastal Program; and
 - c. An ordinance adding Chapters 7.90 (Commercial Medical Cannabis Permits) and 7.95 (Personal Medical Cannabis Permits) to the Monterey County Code.
16. 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.
17. State law requires the Planning Commission to hold a noticed public hearing on proposed amendments to zoning ordinances and to make a written recommendation to the Board of Supervisors.
18. The subject ordinance amending the Coastal Implementation Plan, pursuant to the Coastal Act, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: the County's Planning Commission hold a noticed public hearing and make a written recommendation to the Board of Supervisors; the Board of Supervisors hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; the Board of Supervisors take subsequent final action on the ordinance after the Coastal Commission acts; and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending Part 1 of the Coastal Implementation Plan will not go into effect until after certification by the Coastal Commission and subsequent formal adoption by the Board of Supervisors at a duly noticed public hearing, and it will not become operative until the Coastal Commission's certification is final and effective.
19. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.
20. Implementation of new medical cannabis (marijuana) regulations is anticipated to impact County services, which may necessitate the need for additional County staff. In addition, if medical cannabis (marijuana) regulations are adopted, large upfront costs that will impact the General Fund are anticipated. In order to ensure adequate financial resources are available to support County services and to oversee and enforce the new medical cannabis (marijuana) regulations, none of the ordinances regulating medical cannabis (marijuana) activities will become operative unless 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.

21. On June 22, 2016, the Monterey County Planning Commission held a duly noticed public hearing to consider the proposed amendments to Title 20 (coastal zoning) and Title 21(non-coastal zoning) of the Monterey County as well as the proposed ordinance amending Title 7 of the Monterey County Code. After considering the evidence in the record and hearing testimony, the Planning Commission adopted a resolution of intent to recommend denial of the ordinance as drafted and continued the public hearing to June 29, 2016 with direction to staff to prepare a revised resolution for consideration. At least 10 days before the June 22, 2016 hearing date, the hearing before the Planning Commission was duly noticed, including publication of notice in the Californian.
22. An Initial Study/proposed Negative Declaration on the proposed ordinances was prepared and circulated to the public from May 20, 2016 through June 21, 2016. The Negative Declaration reflects the County's independent judgment and analysis. The custodian of documents which constitute the record of proceedings upon which the decision is based is the County Resource Management Agency, 168 West Alisal Street, Salinas, California. Comments received on the Negative Declaration were provided to the Planning Commission at or in advance of the hearing on June 22, 2016. The Planning Commission made no recommendation on the Negative Declaration.
23. On June 21, 2016, the Resource Management Agency received a letter dated June 20, 2016 from California Coastal Commission staff on the Initial Study/Negative Declaration suggesting the amendment Title 20 (Zoning Ordinance) be amended to state commercial medical cannabis (marijuana) activities are not allowed in coastal –dependent industrial uses. Commercial medical cannabis cultivation is considered an agricultural use. Public Resources Code section 30241 requires the maintenance of the maximum amount of prime agricultural land to assure the protection of the areas' agricultural economy. Conservation of viable agricultural lands is specifically emphasized in the North County Land Use Plan (Section 4.3.1.F). Medical cannabis cultivation can add to the agricultural economy in the Monterey County Coastal areas.
24. On June 29, 2016, the Monterey County Planning Commission adopted Planning Commission Resolution No. 16-015 on a vote of 5-2 (3 absent), recommending that the Monterey County Board of Supervisors not adopt the draft ordinances establishing regulations for medical cannabis activities as drafted and provided 20 ideas to consider prior to adopting the ordinances. Some of these reasons were as follows:
- Delete proposed Chapter 7.95 in its entirety. Any requirement for additional county permits to cultivate medical marijuana for personal use should be removed because it is not consistent with the intent of the Compassionate Use Act and will create additional burden for seriously ill residents coping and treating their illness.
 - The draft regulations should be simplified and not create a new permitting system, but rather use existing permit processes.
 - The draft ordinances should be revised to allow anyone located in an agricultural zoning district to apply for permits to cultivate medical marijuana, indoor or outdoor. Consideration of these permits should provide outcome-based requirements specific to the cannabis industry such as setbacks from sensitive receptors, security plan requirements, and other similar regulations.
 - Delete any references that medical marijuana is not an agricultural product.
 - Compassion for qualified patients is governing principle and priority for any

regulation implementing the Compassionate Use Act.

- The approach to regulation should be fair, equal and even-handed and provide opportunities for all. The regulations should not be unfair and should not provide an unfair and unbalanced benefit for owners of certain greenhouses and industrial spaces. The regulations must be revised to increase equality and make considerations for those who had previously established and been legally operating cannabis business without significant violations or issues.

25. On July 12, 2016, the Board of Supervisors conducted a public hearing on the proposed ordinance. Notice of the public hearing was published in the Californian and the Monterey County Herald at least ten days prior to the hearing.

II. DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a) Adopt the Negative Declaration;
- b) Adopt a resolution of intent to adopt an ordinance, attached hereto as Exhibit 1, amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial medical cannabis activities in the coastal zone of unincorporated Monterey County;
- c) Certify that the amendment is intended to be carried out in a manner fully in conformity with the Coastal Act; and
- d) Direct staff to transmit the proposed ordinance to the California Coastal Commission for certification.

PASSED AND ADOPTED upon motion of Supervisor Potter, seconded by Supervisor Phillips carried this 12th day of July 2016, by the following vote, to wit:

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

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on July 12, 2016.

Dated: July 28, 2016

File Number: 16-870

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy