

Attachment J

This page intentionally left blank.

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

Resolution No.

REF160042/Commercial Cannabis Setback Ordinances

Resolution of the Monterey County Board of Supervisors to:

- a) Find the adoption of an ordinance amending setback requirements for commercial cannabis activities statutorily exempt pursuant to Business and Professions Code Section 26055(h) [CEQA exemption for the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review];
- b) Adopt a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 1,500-foot setback between commercial cannabis retailers and instead require a finding of *public convenience or necessity* for all commercial cannabis retailer Coastal Development Permits; and to remove the 600-foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities;
- 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), amending setback requirements for commercial cannabis activities in the unincorporated coastal areas of Monterey County came before the Monterey County Board of Supervisors at a duly noticed public hearing on March 20, 2018. 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. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
2. The Controlled Substances Act (21 U.S.C. §§ 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is

no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

3. In recent years, the federal government has taken a hands-off approach with regard to states and local governments that have enacted laws authorizing cannabis related conduct, as long as the local agencies have established strong and effective regulatory and enforcement systems that address the threats that cannabis activity could pose to public safety, public health, and other law enforcement interests.
4. It is the intent of the County of Monterey to have a strong and effective regulatory and enforcement system with regard to cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.
5. 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.
6. 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.
7. On October 9, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code §§ 19300, *et seq.*; “MMRSA”). MMRSA created a state licensing program for commercial medical cannabis activities.
8. On July 12, 2016, the Monterey County Board of Supervisors adopted a resolution of intent to adopt coastal zoning regulations to establish criteria for local land use permits pursuant to MMRSA. These regulations were sent to the California Coastal Commission for certification, but the County withdrew the request for certification of these regulations because of discussions with Coastal Commission staff on revisions to the regulation language and intent.
9. On November 8, 2016, by statewide initiative, the voters enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.
10. On June 27, 2017, the State enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code §§ 26000, *et seq.*; “MAUCRSA”), which combined MMRSA and AUMA into a single State licensing scheme for both medicinal and adult-use cannabis. MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities. The state will not issue a state license without first receiving authorization from the applicable local jurisdiction.

11. On December 5, 2017, the Monterey County Board of Supervisors held a duly noticed public hearing and adopted a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Parts 1 and Part 2 (Title 20, coastal zoning ordinance) of the Monterey County Code to regulate commercial cannabis activities in the coastal zone of unincorporated Monterey County consistent with MAUCRSA; and to amend the text of the North County Land Use Plan to allow permitting of commercial cannabis activities at the former Kaiser National Refractories site located at 7697 Highway 1, Moss Landing, notwithstanding the coastal-dependent industrial land use designation on the site (collectively, “amendments”). At least 10 days before the public hearing date, notices of the hearing before the Board of Supervisors were published in the Monterey County Weekly. Following adoption by the Board of Supervisors, the Resolution of Intent was transmitted to the California Coastal Commission for certification.
12. On February 7, 2018, the California Coastal Commission approved Monterey County LCP Amendment number LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance) as submitted by the County.
13. On March 20, 2018, prior to adopting this Resolution, the Board of Supervisors acknowledged receipt of the Coastal Commission certification of the amendments, formally adopted the certified amendments, and directed staff to transmit the amendments back to the California Coastal Commission for confirmation.
14. At the direction of the Monterey County Planning Commission and the Board of Supervisors, staff has prepared an ordinance (Attachment 1) amending the Coastal Implementation Plan, Part 1 to modify the setback requirements for commercial cannabis activities in the unincorporated coastal areas of the County. The proposed ordinance is intended to address permit processing challenges, to better align County regulations with state law, and to promote healthy business competition while still being sensitive to health, safety, and social issues that may arise from commercial cannabis activities.
15. On February 14, 2018, the Monterey County Planning Commission held a duly noticed public hearing to consider and make a recommendation to the Board of Supervisors regarding the draft ordinance amending the setback requirements for commercial cannabis activities. At least 10 days before the first public hearing date, notices of the hearing before the Planning Commission were published in the Monterey County Weekly. At the hearing, the Planning Commission suggested modifying the draft ordinances to: require consideration of a report from the Monterey County Health Department for all retailer permits; change the term “day care center” to “child care center”; add transitional kindergartens to the definition of “child care center”; remove the 600-foot setback from “public parks” and replace it with “playgrounds” for all commercial cannabis activities; and amend the distance measurement from the boundary of a playground rather than from the property line. With these amendments incorporated, the Planning Commission recommended that the Board of Supervisors adopt the Resolution of Intent to amend the coastal zoning ordinance (Title 20) by a vote of 7 ayes, 2 noes, and 1 abstention. Edits suggested by the Monterey County Planning Commission have been incorporated in the proposed ordinance attached hereto as Attachment 1 and incorporated herein.

16. Pursuant to Public Resources Code sections 30000 *et seq.*, and Title 20 of the Monterey County Code, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: the County's Planning Commission hold a noticed public hearing and make a recommendation to the Board of Supervisors; the Board of Supervisors hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; the Board of Supervisors take subsequent final action on the ordinance after the Coastal Commission acts; and the Coastal Commission confirm the County's action. Accordingly, the ordinance amending 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.
17. The County intends to carry out the ordinance amending the Coastal Implementation Plan in a manner fully in conformity with the California Coastal Act.
18. State law (MAUCRSA) provides a statutory exemption from the California Environmental Quality Act (CEQA) for consideration and adoption of local commercial cannabis regulations that require subsequent discretionary permits which are themselves subject to CEQA review [Business and Professions Code Section 26055(h)]. The County's ordinances require a Use Permit or Coastal Development Permit for all commercial cannabis activities in the County. Use Permits and Coastal Development Permits are individually subject to CEQA review. Therefore, the County's updated regulations are statutorily exempt from CEQA review pursuant to Business and Professions Code Section 26055(h).
19. On March 20, 2018, the Board of Supervisors conducted a public hearing to consider the proposed ordinance. Notice of the public hearing was published in the Monterey County Weekly at least 10 days prior to the hearing.

II. DECISION

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

- a) Find the adoption of an ordinance amending setback requirements for commercial cannabis activities statutorily exempt pursuant to Business and Professions Code Section 26055(h) [CEQA exemption for the adoption of local commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review];
- b) Adopt a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 coastal zoning ordinance) to remove the 1,500-foot setback between commercial cannabis retailers and instead require a finding of *public convenience or necessity* for all commercial cannabis retailer Coastal Development Permits; and to remove the 600-foot setback from drug recovery facilities and public parks, and add a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities;

- 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 on this 20th day of March 2018, by the following vote:

AYES:

NOES:

ABSENT:

I, Nicholas E. Chiulos, Interim 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____ for the meeting on _____.

Dated:

Nicholas E. Chiulos, Interim Clerk of the Board of
Supervisors
County of Monterey, State of California

By _____
Deputy

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 20.67 OF TITLE 20 (COASTAL ZONING) OF THE
MONTEREY COUNTY CODE RELATING TO COMMERCIAL CANNABIS
ACTIVITIES**

County Counsel Summary

This ordinance amends Chapter 20.67 of Title 20 (coastal zoning) of the Monterey County Code related to regulation of commercial cannabis activities in the coastal unincorporated area of Monterey County. This ordinance removes the existing 1500-foot setback between commercial cannabis retailers and instead requires a finding of public convenience or necessity for all commercial cannabis retailer Coastal Development Permits. This ordinance also amends the setback requirements for all commercial cannabis activities (cultivation, manufacturing, testing, distribution, and retail). This ordinance removes the 600-foot setback from drug recovery facilities and public parks for all types of commercial cannabis activities. This ordinance adds a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities. Playground is defined to include any park or recreational area specifically designed to be used by children that has play equipment installed. The ordinance maintains the 600-foot setback from schools.

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

SECTION 1. Section 20.67.010 of the Monterey County Code is amended to read as follows:

20.67.010 Definitions

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 20.06 shall otherwise apply.

A. “Bureau” means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

B. “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

C. “Cannabis product” has the same meaning as in Section 11018.1 of the California Health and Safety Code.

D. “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.

E. “Certificate of accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Within the definition of cultivation, the following specific Permit Types, corresponding to state cultivator license types set forth in California Business and Professions Code Section 26061, apply:

1. Type 1A or “specialty indoor” means indoor cultivation using exclusively artificial lighting of between five hundred one (501) and five thousand (5,000) square feet of total canopy size on one premises;

2. Type 1B or “specialty mixed-light” means cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of between two thousand five hundred one (2,501) and five thousand (5,000) square feet of total canopy size on one premises;

3. Type 1C, or “specialty cottage,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of two thousand five hundred (2,500) square feet or less of total canopy size for mixed-light cultivation, or five hundred (500) square feet or less of total canopy size for indoor cultivation, on one premises;

4. Type 2A or “small indoor” means indoor cultivation exclusively using artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

5. Type 2B or “small mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

6. Type 3A or “indoor” means indoor cultivation using exclusively artificial lighting and having a total canopy area between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises;

7. Type 3B or “mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy area of between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises; and

8. Type 4 or “nursery” means cultivation of cannabis solely as a nursery.

G. “Child care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended child care facilities, transitional kindergartens, and school age child care centers.

H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

I. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed pursuant to this Chapter.

K. “Edible cannabis product” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

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

M. “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.

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

O. “Licensee” means any person holding a state license under California Business and Professions Code Sections 26000, *et seq.*

P. “Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state license for commercial cannabis activities, or the state agency authorized to take disciplinary action against the licensee.

Q. “Manufactured cannabis” or “cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

R. “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

S. “Medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

T. “Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

U. “One ownership” and “owner” have the same definition as set forth in Chapter 20.06 of this Title.

V. “Permittee” means a person issued a Coastal Development Permit under this Chapter.

W. “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.

X. “Playground” means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

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

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

AA. “Retailer” and “retail facility” shall have the same meaning as “Dispensary.”

BB. “State” means the State of California.

CC. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.*

DD. “Testing laboratory” means a facility, entity, or site in the state that offers or performs test of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis activities in the state; and

2. Licensed by the Bureau.

EE. “Transport” or “transportation” mean the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to the California Business & Professions Code Sections 26000, *et seq.*

FF. “Volatile Manufacturing” means a manufacturing site that manufactures cannabis products using volatile solvents.

GG. “Volatile solvents” shall have the same meaning as in paragraph (3) of subsection (b) of Section 11362.3 of the California Health and Safety Code, unless otherwise provided by law or regulation.

HH. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

SECTION 2. Subsection B.2 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

2. Retail facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 3. Subsection B.3 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

3. Retail facilities shall serve a public convenience or necessity. To determine that a retailer will serve a public convenience or necessity, the Appropriate Authority shall:

a. Consider a report from the Monterey County Health Department concerning the proposed retail facility's impacts to long-term public health and disadvantaged communities; and

b. Find that one or more of the following criteria are met:

i. The retail facility will not result in an excessive concentration within in the census tract where the retail facility would be located. For the purposes of this Section, an excessive concentration exists when the ratio of retail facilities to population within the census tract in which the applicant premises is located exceeds the ratio of retail facilities to the population in Monterey County;

ii. The retail facility will enhance the economic viability of the area;

iii. The retail facility will serve a portion of the commercial cannabis market not served by other retail facilities in the area; or

iv. The Monterey County Sheriff's Office and the Monterey County Health Department have no objection to the retail facility.

SECTION 4. Subsection C.2 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

2. The retail facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 5. Subsection C.6 of Section 21.67.040 is added to the Monterey County Code to read as follows:

6. The retail facility at the proposed location will serve a public convenience or necessity.

SECTION 6. Subsection B.4 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

4. Cannabis cultivation shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 7. Subsection C.2 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

2. The cultivation will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 8. Subsection B.2 of Section 20.67.060 of the Monterey County Code is amended to read as follows:

2. Cannabis manufacturing facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 9. Subsection C.2 of Section 20.67.060 of the Monterey County Code is amended to read as follows:

2. The manufacturing facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 10. Subsection B.2 of Section 20.67.070 of the Monterey County Code is amended to read as follows:

2. Cannabis testing facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 11. Subsection C.2 of Section 20.67.070 of the Monterey County Code is amended to read as follows:

2. The testing facility will not be located within six hundred a (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time the of approval of permits by the Appropriate Authority.

SECTION 12. Subsection B.2 of Section 20.67.080 of the Monterey County Code is amended to read as follows:

2. Cannabis distribution facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility.

SECTION 13. Subsection C.2 of Section 20.67.080 of the Monterey County Code is amended to read as follows:

2. The distribution facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time the of approval of permits by the Appropriate Authority.

SECTION 14. 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 15. This Ordinance shall become effective on the thirty-first day following its adoption or upon California Coastal Commission confirmation that County's ordinance satisfies the Coastal Commission's certification order, whichever occurs later.

PASSED AND ADOPTED on this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Luis A. Alejo, Chair
Monterey County Board of Supervisors

A T T E S T:

Nicholas E. Chiulos
Interim Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM BY:

Wendy S. Strimling
Senior Deputy County Counsel

This page intentionally left blank

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 20.67 OF TITLE 20 (COASTAL ZONING) OF THE
MONTEREY COUNTY CODE RELATING TO COMMERCIAL CANNABIS
ACTIVITIES**

County Counsel Summary

This ordinance amends Chapter 20.67 of Title 20 (coastal zoning) of the Monterey County Code related to regulation of commercial cannabis activities in the coastal unincorporated area of Monterey County. This ordinance removes the existing 1500-foot setback between commercial cannabis retailers and instead requires a finding of public convenience or necessity for all commercial cannabis retailer Coastal Development Permits. This ordinance also amends the setback requirements for all commercial cannabis activities (cultivation, manufacturing, testing, distribution, and retail). This ordinance removes the 600-foot setback from drug recovery facilities and public parks for all types of commercial cannabis activities. This ordinance adds a 600-foot setback from playgrounds, child care centers, and youth centers for all types of commercial cannabis activities. Playground is defined to include any park or recreational area specifically designed to be used by children that has play equipment installed. The ordinance maintains the 600-foot setback from schools.

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

SECTION 1. Section 20.67.010 of the Monterey County Code is amended to read as follows:

20.67.010 Definitions

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 20.06 shall otherwise apply.

A. “Bureau” means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

B. “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

C. “Cannabis product” has the same meaning as in Section 11018.1 of the California Health and Safety Code.

D. “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.

E. “Certificate of accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Within the definition of cultivation, the following specific Permit Types, corresponding to state cultivator license types set forth in California Business and Professions Code Section 26061, apply:

1. Type 1A or “specialty indoor” means indoor cultivation using exclusively artificial lighting of between five hundred one (501) and five thousand (5,000) square feet of total canopy size on one premises;

2. Type 1B or “specialty mixed-light” means cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of between two thousand five hundred one (2,501) and five thousand (5,000) square feet of total canopy size on one premises;

3. Type 1C, or “specialty cottage,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of two thousand five hundred (2,500) square feet or less of total canopy size for mixed-light cultivation, or five hundred (500) square feet or less of total canopy size for indoor cultivation, on one premises;

4. Type 2A or “small indoor” means indoor cultivation exclusively using artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

5. Type 2B or “small mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy size between five thousand one (5,001) and ten thousand (10,000) square feet on one premises;

6. Type 3A or “indoor” means indoor cultivation using exclusively artificial lighting and having a total canopy area between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises;

7. Type 3B or “mixed-light” means cultivation using a combination of natural and supplemental artificial lighting and having a total canopy area of between ten thousand one (10,001) and twenty-two thousand (22,000) square feet on one premises; and

8. Type 4 or “nursery” means cultivation of cannabis solely as a nursery.

G. “Child care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended child care facilities, transitional kindergartens, and school age child care centers.

H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

I. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed pursuant to this Chapter.

K. “Edible cannabis product” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

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

M. “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.

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

O. “Licensee” means any person holding a state license under California Business and Professions Code Sections 26000, *et seq.*

PQ. “Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state license for commercial cannabis activities, or the state agency authorized to take disciplinary action against the licensee.

QP. “Manufactured cannabis” or “cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

RQ. “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

SR. “Medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

ST. “Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

UF. “One ownership” and “owner” have the same definition as set forth in Chapter 20.06 of this Title.

VU. “Permittee” means a person issued a Coastal Development Permit under this Chapter.

WV. “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.

X. “Playground” means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

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

X. ~~“Public park” means an area created, established, designated, or maintained by a special district, a County, the State, or the Federal government for public play, recreation, or enjoyment or for the protection of natural resources and features at the site.~~

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

~~AAZ~~. “Retailer” and “retail facility” shall have the same meaning as “Dispensary.”

~~BBA~~. “State” means the State of California.

~~CCBB~~. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.*

~~DDE~~. “Testing laboratory” means a facility, entity, or site in the state that offers or performs test of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis activities in the state; and
2. Licensed by the Bureau.

~~EEDD~~. “Transport” or “transportation” mean the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to the California Business & Professions Code Sections 26000, *et seq.*

~~FFEE~~. “Volatile Manufacturing” means a manufacturing site that manufactures cannabis products using volatile solvents.

~~GGFF~~. “Volatile solvents” shall have the same meaning as in paragraph (3) of subsection (b) of Section 11362.3 of the California Health and Safety Code, unless otherwise provided by law or regulation.

~~HH~~. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

SECTION 2. Subsection B.2 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

2. Retail facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility~~feet from any school, public park, or a drug recovery facility.~~

SECTION 3. Subsection B.3 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

3. Retail facilities shall ~~not be located within one thousand five hundred (1,500) feet of another retail facility~~ serve a public convenience or necessity. To determine that a retailer will serve a public convenience or necessity, the Appropriate Authority shall:

a. Consider a report from the Monterey County Health Department concerning the proposed retail facility's impacts to long-term public health and disadvantaged communities; and

b. Find that one or more of the following criteria are met:

i. The retail facility will not result in an excessive concentration within in the census tract where the retail facility would be located. For the purposes of this Section, an excessive concentration exists when the ratio of retail facilities to population within the census tract in which the applicant premises is located exceeds the ratio of retail facilities to the population in Monterey County;

ii. The retail facility will enhance the economic viability of the area;

iii. The retail facility will serve a portion of the commercial cannabis market not served by other retail facilities in the area; or

iv. The Monterey County Sheriff's Office and the Monterey County Health Department have no objection to the retail facility.

SECTION 4. Subsection C.2 of Section 20.67.040 of the Monterey County Code is amended to read as follows:

2. The retail facility will not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority ~~public park, or drug recovery facility, or within one thousand five hundred (1,500) feet of another retail facility.~~

SECTION 5. Subsection C.6 of Section 21.67.040 is added to the Monterey County Code to read as follows:

6. The retail facility at the proposed location will serve a public convenience or necessity.

SECTION 6. Subsection B.4 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

4. Cannabis cultivation shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a

youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility~~feet of a school, public park, or drug recovery facility.~~

SECTION 7. Subsection C.2 of Section 20.67.050 of the Monterey County Code is amended to read as follows:

2. The cultivation will not be located within a six hundred (600) ~~feet from any~~foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority, ~~public park, or drug recovery facility.~~

SECTION 8. Subsection B.2 of Section 20.67.060 of the Monterey County Code is amended to read as follows:

2. Cannabis manufacturing facilities shall not be located within a six hundred (600) ~~foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground~~ that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility~~feet from any school, public park, or a drug recovery facility.~~

SECTION 9. Subsection C.2 of Section 20.67.060 of the Monterey County Code is amended to read as follows:

2. The manufacturing facility will not be located within a six hundred (600) ~~feet from any~~foot radius of a school, ~~public park, or drug recovery facility~~ providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority.

SECTION 10. Subsection B.2 of Section 20.67.070 of the Monterey County Code is amended to read as follows:

2. Cannabis testing facilities shall not be located within a six hundred (600) ~~foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground~~ that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility~~feet from any school, public park, or a drug recovery facility.~~

SECTION 11. Subsection C.2 of Section 20.67.070 of the Monterey County Code is amended to read as follows:

2. The testing facility will not be located within six hundred a (600) ~~feet from any~~foot radius of a school, ~~public park, or drug recovery facility~~ providing instruction in

kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time the of approval of permits by the Appropriate Authority.

SECTION 12. Subsection B.2 of Section 20.67.080 of the Monterey County Code is amended to read as follows:

2. Cannabis distribution facilities shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time of approval of permits by the Appropriate Authority. The distance specified in this section shall be measured from property line to property line, except for playgrounds, which will be measured from the boundary of the playground facility~~feet from any school, public park, or a drug recovery facility.~~

SECTION 13. Subsection C.2 of Section 20.67.080 of the Monterey County Code is amended to read as follows:

2. The distribution facility will not be located within a six hundred (600) feet from any-foot radius of a school, public park, or drug recovery facility providing instruction in kindergarten or any grades 1 through 12, a child care center, a youth center, or a playground that is in existence at the time the of approval of permits by the Appropriate Authority.

SECTION 14. 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 15. This Ordinance shall become effective on the thirty-first day following its adoption or upon California Coastal Commission confirmation that County's ordinance satisfies the Coastal Commission's certification order, whichever occurs later.

PASSED AND ADOPTED on this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Luis A. Alejo, Chair

Monterey County Board of Supervisors

A T T E S T:

Nicholas E. Chiulos

Interim Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM BY:

Wendy S. Strimling
Senior Deputy County Counsel