

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 7.100 OF THE MONTEREY COUNTY CODE TO REDUCE THE COMMERCIAL CANNABIS BUSINESS TAX RATES AND PENALTIES

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to reduce the County's commercial cannabis business tax rates and penalties. The ordinance establishes the following tax rates effective July 1, 2018: for indoor cultivation, the tax rate is \$8.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the Consumer Price Index; for mixed light cultivation, the tax rate is \$5.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the Consumer Price Index; for nursery cultivation, the tax rate is \$1.00 per square foot of authorized canopy through June 30, 2020, to increase by \$1 per square foot per fiscal year until a maximum rate of \$5.00 per square foot is reached, and to increase thereafter based on the Consumer Price Index; for manufacturers, the tax rate is 2.5% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for distributors, the tax rate is 2% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for dispensaries, the tax rate is 4% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 0.5% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; and for testers, the tax rate is 1% of gross receipts per fiscal year with no increase. The ordinance also reduces the penalty if the commercial cannabis business tax is not timely paid. The penalty is reduced from 25% to 10% plus interest after the initial due date, and then an additional 10% plus interest after one month if the tax remains unpaid. This ordinance does not preclude the County from adoption of an ordinance in the future to reinstate the maximum tax rates approved by the Monterey County voters on November 8, 2016.

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

SECTION 1. Findings and Declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

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

C. The federal government has stated the importance for states and local governments that have enacted laws authorizing cannabis related conduct to implement strong and effective regulatory and enforcement systems that will address the threat that cannabis activity could pose to public safety, public health, and other law enforcement interests.

D. 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.

E. 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.

F. 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.

G. On July 12, 2016, the Monterey County Board of Supervisors adopted inland zoning regulations establishing criteria for issuing local land use permits pursuant to the MMRSA (Ordinance Number 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code). On July 19, 2016, the Monterey County Board of Supervisors adopted regulations establishing criteria for issuing local business permits (Ordinance Numbers 5272 and 5273, codified at Monterey County Code Chapters 7.90 and 7.95). All of these ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant California Elections Code section 15372.

H. On November 8, 2016, the voters approved the tax (Measure Y, codified at Monterey County Code Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Elections Code section 15372. Specifically, the voters approved a tax on commercial cannabis activities in the unincorporated area of Monterey County up to a maximum of: \$25.00 per square foot on cultivation with an annual adjustment by Consumer Price Index (“CPI”) thereafter; \$5.00 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other cannabis business activities with no CPI adjustment.

I. On November 8, 2016, by statewide initiative, the voters enacted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). AUMA created a state licensing program for commercial adult-use cannabis activities.

J. 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 and to tax those activities.

K. On December 5, 2017, the Monterey County Board of Supervisors 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”).

L. On February 7, 2018, the California Coastal Commission certified Monterey County LCP Amendment number LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance) as submitted by the County.

M. On March 20, 2018, the Monterey County Board of Supervisors adopted coastal zoning regulations, as certified by the Coastal Commission, establishing criteria for issuing local land use permits pursuant to the MAUCRSA (Ordinance Number 5299, amending sections of Title 20 and adding Chapter 20.67 to the Monterey County Code). Also, on March 20, 2018, the Board of Supervisors adopted amendments to Chapter 21.67 to modify setback requirements from public parks, playgrounds, child care centers, and youth centers, and adopted a resolution of intent to adopt similar amendments to Chapter 20.67 and to submit those amendments to the Coastal Commission for certification.

N. This ordinance reduces the tax rates below the amounts approved by the voters. The Monterey County Board of Supervisors directed preparation of this ordinance after evaluating information provided by staff and the public concerning the cumulative impact of state and local taxes, market saturation, a decrease in wholesale cannabis prices, increased costs to retrofit greenhouses, and increased regulatory development costs. Additionally, this ordinance adds further differentiation between types of cannabis activity to account for the different associated costs and revenues. However, the Board of Supervisors reserves its right to later restore higher tax rates up to the maximum amounts approved by the voters in Measure Y and to include taxation of any commercial cannabis activity as approved by the voters in Measure Y. Such restoration of tax rates would not constitute an increase in tax rates that would require voter approval.

SECTION 2. Section 7.100.030 of the Monterey County Code is amended to read as follows:

This ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing ~~medical~~ cannabis or ~~medical~~ cannabis products by commercial cannabis businesses in the unincorporated area of the County, pursuant to ~~the state Medical Marijuana Regulation and Safety Act, specifically California Business and Professions Code~~ California Revenue and Taxation Code section 34021.519348;

~~B. To impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the unincorporated area of the County if the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” is approved by the voters in the November 2016 election, or if nonmedical marijuana activity otherwise becomes legal in the State of California, notwithstanding if state law uses the term “marijuana” or “cannabis”;~~

~~CB.~~ To impose a tax on lawful commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax;

~~C. To impose the tax rates prescribed in Section 7.100.050 of this Chapter;~~

~~D. To retain the ability, subject to adoption of an ordinance to amend this Chapter, to implement the maximum tax rates as approved by the Monterey County voters on November 8, 2016 as follows: twenty-five dollars (\$25.00) per square foot on cultivation with an annual adjustment thereafter by Consumer Price Index (“CPI”); five dollars (\$5.00) per square foot on nurseries with annual CPI adjustment thereafter; and ten percent (10%) of gross receipts on manufacturing, distributing, testing, dispensing and delivering commercial cannabis with no CPI adjustment; and~~

~~E. To specify the type of tax and rate of tax to be levied and the method of collection;~~ ~~and~~

~~E. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.~~

SECTION 3. Section 7.100.040 of the Monterey County Code is amended to read as follows:

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

A. “Business” shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.~~means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.~~

C. “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients~~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. “Cannabis product” also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.~~

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. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

E. “Commercial cannabis business” means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the unincorporated area of the County, whether or not carried on for gain or profit.

F. “Commercial cannabis business tax,” “business tax,” or “commercial cannabis tax” means the tax due pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.

G. “Commercial cannabis cultivation” means cultivation conducted by, for, as part of a commercial cannabis business.

H. “County permit” means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business. The term “County permit” includes a commercial ~~medical~~ cannabis permit issued pursuant to Chapter 7.90 of the Monterey

County Code, ~~and if nonmedical marijuana business becomes legal under state law, the term “County permit” includes such permit as County may require to operate or engage in nonmedical commercial cannabis business.~~

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

J. “Delivery” means the commercial transfer of cannabis or cannabis products from a dispensary.

K. “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.

L. “Distributor” or “distribution” or “distribution facility” means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.

M. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

N. “Engaged in business” means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the County if:

1. Such person or person’s employee maintains a fixed place of business within unincorporated area of the County for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the unincorporated area of County for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the unincorporated area of County for sale in the ordinary course of business;
4. Such person or person’s employee regularly conducts solicitation of business within the unincorporated area of County;
5. Such person or person’s employee performs work or renders services in the unincorporated area of County; and

6. Such person or person's employee utilizes the streets within the unincorporated area of County in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

O. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the unincorporated area of County.

P. "Fiscal year" means July 1 through June 30 of the following calendar year.

Q. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of

the taxpayer's business;

7. Cash value of sales, trades or transactions between departments or units of the same business;

8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

9. Transactions between a partnership and its partners;

10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

a. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or

b. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or

c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above;

12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

R. "Immature plant" or "immature" means a cannabis plant that is not flowering.

S. "Indoor cultivation" means the cultivation of cannabis, except nurseries, using exclusively artificial lighting.

TR. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid County permit.

U. “Mature plant” or “mature” means a cannabis plant that is flowering.

V. “Mixed light cultivation” means the cultivation of cannabis, except nurseries, using a combination of natural and supplemental artificial lighting.

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

XF. “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, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

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

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

ZV. “Sale” means and includes any sale, exchange, or barter.

AA. “Square foot” or “square footage” means the maximum amount of canopy for commercial cannabis cultivation authorized by a County permit issued to a person engaging in commercial cannabis business, or by a state license in the absence of a County permit or license, not deducting for unutilized square footage, and shall be the basis for the tax base for cultivation.

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 ~~19300~~26000, *et seq.* or other applicable state law.

DD. “Testing laboratory” means a facility, entity, or site in the state that offers

or performs testing 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 industry in the state; and
2. Licensed by the California Bureau of Cannabis Control~~Registered with the California State Department of Public Health.~~

~~EEBB.~~ “Transport” means 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.~~means the transfer of cannabis or cannabis products from the permitted business location of one permittee or licensee to the permitted business location of another permittee or licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to state law.~~

~~CC.~~ “Transporter” ~~means a person issued all required state and County permits to transport cannabis or cannabis products between permitted facilities.~~

~~DDFF.~~ “Treasurer-Tax Collector” means the Treasurer-Tax Collector of the County of Monterey, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter.

SECTION 4. Section 7.100.050 of the Monterey County Code is amended to read as follows:

A. There is established and imposed a commercial cannabis business tax at the rates set forth in this Chapter.

B. Tax on indoor commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis indoor cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July~~January~~ 1, 201~~87~~ through June 30, 2020 for commercial cannabis indoor cultivation, excluding nurseries, shall be set at fifteen-eight dollars (\$~~845~~.00) per fiscal year, per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for commercial cannabis indoor cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis indoor cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each

fiscal year by ~~five-one~~ dollars (\$~~15~~.00) per square foot of authorized canopy, not to exceed ~~the maximum tax~~ rate of ~~twenty-five~~~~fifteen~~ dollars (\$~~125~~.00) per square foot. - Beginning on July 1, 202~~26~~ and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

C. Tax on mixed light commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis mixed light cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2020 for commercial cannabis mixed light cultivation, excluding nurseries, shall be set at five dollars (\$5.00) per fiscal year, per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for commercial cannabis mixed light cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis mixed light cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized canopy, not to exceed a rate of fifteen dollars (\$15.00) per square foot. Beginning on July 1, 2029 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

DC. Tax on commercial cultivation of cannabis as a nursery.

1. Every person who is engaged in the commercial cultivation of cannabis as a nursery as defined in this Chapter in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective ~~July~~~~January~~ 1, 201~~78~~ through June 30, 2020 shall be set at ~~one~~~~two~~ dollars (\$~~21~~.00) per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for cultivation of cannabis as a nursery, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for cultivation of cannabis as a nursery allowed

by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation as a nursery be deducted for the purpose of determining the tax for cultivation as a nursery.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each fiscal year by one dollar ~~and fifty cents~~ (\$1.500) per square foot of canopy utilized for cannabis cultivation as a nursery, not to exceed the maximum tax rate of five dollars (\$5.00) per square foot per annum. Beginning on July 1, 2024~~2~~ and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

~~E.D.~~ Tax on ~~all other~~ commercial cannabis ~~businesses~~ manufacturers.

1. Every person who is engaged in business as a ~~dispensary, manufacturer, testing laboratory, transporter, distributor, or distribution facility, or engaging in delivery of commercial~~ cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective ~~July~~ January 1, 2017~~8~~ through June 30, 2020~~19~~ shall be set at ~~five~~ two and one-half percent (2.5%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019~~20~~, such tax rate shall automatically increase each fiscal year by ~~two and one-half~~ one percent (2.5%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts.

F. Tax on commercial cannabis distributors or distribution facilities.

1. Every person who is engaged in business as a distributor or distribution facility of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at two percent (2%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one percent (1%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts.

G. Tax on commercial cannabis testing laboratories.

Every person who is engaged in business as a testing laboratory of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate effective July 1, 2018 shall be set at one percent (1%) of the gross receipts per fiscal year.

H. Tax on commercial cannabis dispensaries.

1. Every person who is engaged in business as a dispensary of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at four percent (4%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one-half percent (0.5%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts.

SECTION 5. Subsection (A) of Section 7.100.100 of the Monterey County Code is amended to read as follows:

A. Any person who fails or refuses to pay any commercial cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ~~twenty-fivet~~ten percent (~~25~~10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one and one-half percent (1.5%) per month; and

2. If the tax remains unpaid for a period exceeding one (1) calendar month beyond the due date, an additional penalty equal to ~~twenty-fivet~~ten percent (~~10~~25%) of the amount of the tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

SECTION 6. Section 7.100.130 of the Monterey County Code is amended to read as follows:

~~A. The provisions of this Chapter shall not apply to personal medical cannabis cultivation to all of the following activities:-~~

A. Possession, storage, manufacturing, or transportation of medicinal cannabis, or cultivation of up to one hundred (100) square feet total canopy area of medicinal cannabis by a qualified patient, as that term is defined in Section 11362.7 of the California Health and Safety Code, provided the qualified patient possesses, stores, manufactures, transports, or cultivates cannabis exclusively for his or her personal medical use, and does not provide, donate, sell, or distribute cannabis to any other person. Qualified patients shall, upon request, provide appropriate documentation to law enforcement demonstrating that they have a valid doctor's recommendation to use cannabis for medicinal purposes.

B. Possession, storage, manufacturing, transportation of medicinal cannabis, or cultivation of up to one hundred (100) square feet of canopy area of medicinal cannabis by a primary caregiver on behalf of a qualified patient, within the meaning of Section 11362.7 of the California Health and Safety Code, provided the primary caregiver does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code. Primary caregivers shall, upon request, provide appropriate documentation to law enforcement demonstrating that they are a primary caregiver for a qualified patient.

C. Possession, processing, storage, transportation, or donation of not more than 28.5 grams of cannabis or not more than eight (8) grams of concentrated cannabis to persons twenty-one (21) years of age or older by persons twenty-one (21) years of age or older.

D. The cultivation of up to six (6) cannabis plants by persons twenty-one (21) years of age or older as allowed pursuant to Section 11362.1(a) of the California Health and Safety Code.
~~B. If the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" is approved by the voters in the November 2016 election, or if nonmedical cannabis use otherwise becomes legal in the State of California, the provisions of this Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use. If a state law is adopted that legalizes nonmedical use of cannabis, the Treasurer Tax Collector may implement this exemption to conform to such exemption for personal use as may be included in state law.~~

SECTION 7. 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 8. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

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

AYES:

NOES:

ABSENT:

Luis A. Alejo, Chair
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel