

Appendix P.1

**Kern County Cannabis Land Use Ordinance
Project Option A:
Revisions to Title 19 – Kern County Zoning
Ordinance, Title 5 – Business Licenses and
Regulations, and Title 13 – Parks,
Recreation, and Public Areas**

DRAFT

19.08.55 CANNABIS-RELATED FACILITIES, CULTIVATION AND ACTIVITIES

A. Purpose and application.

The purpose of this section is to ban commercial medicinal and recreational cannabis businesses and activities of all kinds that are, the subject of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (formerly known as the Medical Marijuana Regulation and Safety Act and the Adult Use of Marijuana Act) in order to promote the health, safety, and general welfare of the citizens of the County. It is also the purpose of the Chapter to affirm that personal cannabis use in the County of Kern must comply with state law requirements.

B. Commercial recreational cannabis businesses prohibited

Businesses conducting commercial recreational cannabis activity licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act are prohibited in all zone districts. No local authorization for any of the activities covered by the license classifications identified in Business and Professions Code 26050 shall be granted for any zone district in the unincorporated area of the County of Kern.

C. Commercial medicinal cannabis businesses prohibited

Businesses conducting commercial medicinal cannabis activity licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act are prohibited in all zone districts. No local authorization for any of the activities covered by the license classifications identified in Business and Professions Code 26050 shall be granted for any zone district in the unincorporated area of the County of Kern.

D. Public nuisance

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this section, is hereby declared to be unlawful and a public nuisance and is subject to the enforcement provisions of subsection J of this section, in addition to any other enforcement remedy available to the county under any applicable state or federal statute, the Kern County Ordinance Code, or any other lawful power the county may possess

E. Applicability

- a. All provisions of this section shall apply outdoors and indoors.

b. All provisions of this section shall apply to public and private property within the county's jurisdiction.

c. All provisions of this section shall apply to any persons, including primary caregivers and qualified patients.

d. Nothing in this section is intended, nor shall be construed or inferred to burden any defense to criminal prosecution under the Compassionate Use Act of 1996, the Adult Use of Marijuana Act of 2016 or the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

F. Definitions.

For purposes of this Chapter, these words and phrases shall be defined as follows:

A. "Cannabis" shall have the same definition as in California Business and Professions Code 26001(f) and Health and Safety Code Section 11018 as they now read or as amended.

B. "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code as it now reads or as amended.

C. "Commercial medicinal cannabis activity" includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis products for non-personal medicinal purposes as provided in the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

D. "Commercial recreational cannabis activity" includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis products for non-personal non-medicinal purposes as provided in the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

E. "Commercial cannabis activity" includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis products as provided in the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

F. "County" means the County of Kern or the unincorporated area of the County of Kern as required by the context.

G. "Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, curing, grading, trimming processing, or storage of marijuana in any location.

H. "Marijuana" shall have the same definition as Cannabis.

I. "Medicinal Cannabis" or "medicinal cannabis product" means cannabis or cannabis product used for medicinal purposes in accordance with the Compassionate Use Act of 1996, found at section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation as required by the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

J. "Medicinal Cannabis Dispensary" or "Dispensaries" means

any operation, including a store-front facility or structure, mobile facility, or delivery service, wherein medical cannabis is made available, sold, offered for sale, given, distributed, traded, or otherwise provided to primary caregivers or qualified patients, as defined by this Chapter.

“Medicinal Cannabis Dispensary” or “Dispensaries” shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.7 et seq.

K. “Primary caregiver” shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.

L. “Planning Director” shall refer to the Director of the Planning and Natural Resources Department of the County of Kern.

M. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

N. “Recreational cannabis” means cannabis used for non-medicinal purposes in accordance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

O. “Qualified patient” shall have the same definition as California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.

G. Personal recreational cannabis use

Except as provided below, personal recreational cannabis use shall comply with the Medicinal and Adult-Use Cannabis Regulation and Safety Act., including, but not limited to, California Health and Safety Code sections 11362.1 through 11362.45 as currently stated or as otherwise amended. Outdoor planting and cultivation of cannabis is prohibited.

H. Personal medicinal cannabis use

Except as provided below, personal medicinal cannabis use shall comply with the Medicinal and Adult-Use Cannabis Regulation and Safety Act., including, but not limited to, California Health and Safety Code sections 11362.1 through 11362.79 as currently stated or as otherwise amended.

Outdoor planting and cultivation of marijuana is prohibited.

I. Amortization of Existing Medicinal Cannabis Dispensaries

Any medicinal cannabis dispensary which was in operation on or before May 10, 2016, when the moratorium set forth in former Chapter 5.86 on the establishment of new medicinal marijuana dispensaries went into effect, and is also currently in compliance with former Kern County Ordinance Code section 5.84.010, **for zoning, setbacks and building code** shall be deemed to be a temporary lawful medicinal cannabis dispensary and shall obtain a temporary license from the State of California for a period of time not more than 12 months beyond the effective date of this ordinance. ***The Planning Director shall issue a letter to the State of California authorizing the issuance of a cannabis license after satisfaction of the following: confirmation that the facility complies with all requirements former Ordinance Code section 5.84.010 for setbacks and appropriate zoning for a pharmacy, and an inspection has been completed by the Kern County Building Inspection Division for interior and exterior of the building used for the cannabis dispensary for compliance with the building code and all work has been completed by the property owner/ or tenant for any deficiencies found.*** Except as otherwise provided below, any such dispensary shall be allowed to operate at its current location for one year from the effective date of this ordinance. At the expiration of one year, the dispensary shall cease operations.

In the event a temporary lawful medicinal cannabis dispensary ceases operation for a period of 30 consecutive days or more after the effective date of this ordinance, it shall be deemed to have been abandoned and shall not re-open as a medicinal cannabis dispensary.

To mitigate any substantive economic impact and to allow a dispensary owner to recoup the value of his or her investment not otherwise realized during the one year of operation as provided above, the owner of a temporary lawful medicinal cannabis dispensary may apply for an extension of time within which to cease operations. The application shall be made on forms provided by the Department of Planning and Natural Resources **with the applicable fees** and shall be filed no more than 120 days and no less than 90 days prior to the day the dispensary is required to cease operations. No application for extension filed less than 90 days prior to the day the dispensary is required to cease operations shall be considered. The applicant shall provide all of the information required by the application. Refusal or failure to provide this information shall constitute a waiver of the right to seek an extension of time in which to operate.

The Planning Director shall notify the applicant of the time and place of a hearing to be held on such request before the Planning Director. After such hearing, the Planning Director shall issue a written order on the request for extension no less than 60 days prior to the date scheduled for closure of the dispensary.

The Planning Director shall consider all relevant circumstances and factors in considering the request for an extension to the amortization period, including, but not limited to, the following to the extent they are applicable:

1. Character of the land and land uses in the surrounding area
2. Location of the use in relation to surrounding uses
3. Length of time the use has been in existence and the length of time the use has been nonconforming
4. Amount of capital investment by the owner of the Dispensary in the property
5. Amount of investment realized to date and the amount remaining
6. Existence or nonexistence of lease obligations
7. Removal costs directly attributable to discontinuance of the use
8. Burden on the property owner resulting from discontinuance of the use
9. Benefit to the public from discontinuance of the use.

The decision of the Planning Director shall be final after ten calendar days of and including the date of the hearing.

An applicant may appeal the decision of the Planning Director to the Kern County Board of Supervisors. The applicant may appeal the decision by filing with the Planning and Natural Resources Department a request for appeal prior to the time the decision becomes final. The appeal shall be accompanied with the fee established by the Board of Supervisors pursuant to Section 19.06.040 of this title. The appeal shall include supporting documentation and basis for the appeal. The notice of appeal must be submitted to the Kern County Clerk of the Board with the within ten days of the issuance of the written order by the Planning Director. The Board of Supervisors shall consider the appeal in a public session as part of one of its regularly scheduled meetings. The matter shall be set on the Board of Supervisors agenda by the Planning and Natural Resources Department on the next available agenda. Selection of the date shall be coordinated with the applicant and written notification of the date shall be provided to the applicant. The Planning and Natural

Resources Department shall consult with County Counsel on the preparation of the matter for the Board consideration. A copy of the report provided to the Board shall be sent to the applicant when the report is normally released to the public by the Clerk of the Board. The Clerk of the Board shall notify the applicant of the date and time the appeal will be heard. No later than fourteen days prior to the appeal, the applicant shall submit all supporting documentation to the Clerk of the Board and to the Planning Director. The Planning Director shall file a response, if any, with the Clerk of the Board and shall serve a copy of the response on the applicant no later than seven days prior to the appeal hearing. A determination made by the Board of Supervisors on the appeal shall be final.

J. Enforcement

Violations of this section shall be subject to the enforcement provisions set forth in this subsection, as well as any other enforcement remedy available to the county under any applicable state or federal statute, the Kern County Ordinance Code, or any other lawful power the county may possess. If applicable, each day a violation of this section continues shall be considered a separate offense.

1. Violations of this section pertaining to personal cannabis use shall be punishable according to all applicable statutes as currently stated or as otherwise amended, including but not limited to, those statutes set forth in Chapter 6, of Division 10, of the California Health and Safety Code.

2. Any person, business, or owner or possessor of any property who violates this section pertaining to commercial cannabis activity, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1000.00) or by imprisonment in the county jail for a time not exceeding six months, or by both such fine and imprisonment.

3. Any person, business, or owner or possessor of any property who violates this section pertaining to commercial cannabis activity, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, is subject to the administrative procedures and penalties set forth in Chapter 8.54 of the Kern County Ordinance Code.

4. Any person, business, or owner or possessor of any property who violates this section pertaining to commercial cannabis activity, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, is subject to the summary abatement procedures set forth in Chapter 8.44 of the Kern County Ordinance Code.

5. Any person, business, or owner or possessor of any property who violates this section pertaining to commercial cannabis activity, or who, with the lawful authority to prevent it, causes, permits, or allows such a violation, is subject to a civil action in the state court system as set forth in

Section 19.114.080 of the Kern County Ordinance Code.

K. Severability

If any part of this section is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality, shall not affect the validity, lawfulness, or constitutionality of any other part of this section.

~~Chapter 5.84—MEDICAL MARIJUANA COOPERATIVES OR COLLECTIVES~~**Sections:**~~5.84.010—Distance requirements; zoning; definitions; penalty for violation.~~

- ~~(a) A medical marijuana cooperative or collective may not be located within one thousand (1,000) feet of a school, recreation center, or youth center measured from the primary entrance to a cooperative or collective and the closest property line of the property of a school, recreation center, or youth center or on which a school, recreation center, or youth center is operated.~~
- ~~(b) A medical marijuana cooperative or collective shall be treated as a pharmacy for zoning purposes.~~
- ~~(c) "Medical marijuana cooperative" and "medical marijuana collective" are defined as set forth in section IV of the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued in August, 2008, as they now read or as amended.~~
- ~~(d) Any person who violates any provision in this section is guilty of a misdemeanor.~~

~~(Ord. No. G-7849, § 3, 3-31-09)~~

Editor's note—Chapter 5.84, derived from Ord. No. G-7849, is restored to this Code of Ordinances pursuant to the April 5, 2016 decision issued by the Fifth District Court of Appeal in *County of Kern v. T.C.E.F., Inc.*, F070813 (Cal. Ct. App. 2016).

~~Chapter 5.85—MEDICAL MARIJUANA CULTIVATION⁽²⁾~~**Sections:**

Footnotes:

~~—(2)—~~

Editor's note—Ord. No. G-8556, § 2, adopted May 19, 2015, amended Ch. 5.85 in its entirety, in effect repealing and reenacting said chapter to read as set out herein. The former Ch. 5.85, §§ 5.85.010—5.85.080, pertained to similar subject matter and derived from Ord. No. G-8190, § 2, adopted Aug. 9, 2011.

~~5.85.010—Findings.~~~~The board of supervisors of the County of Kern finds and declares as follows:~~

- A. ~~In 1996, the voters of the state of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").~~
- B. ~~The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.~~
- C. ~~In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.~~
- D. ~~In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that the Compassionate Use Act and the Medical Marijuana Program Act neither expressly nor impliedly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land.~~
- E. ~~This chapter is enacted, consistent with Health and Safety Code Section 11362.7 et seq., to protect the public health, safety, and welfare of Kern County residents in relation to the legal operation and location of medical marijuana collectives.~~
- F. ~~According to the Kern County Sheriff, medical marijuana collectives have been operating in Kern County for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Some of the individuals arrested would be disqualified from operating a dispensary based on reasonable standards relating to their criminal history backgrounds. Other public entities have documented violence related to operation of medical marijuana collectives. Medical marijuana collectives attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Medical marijuana collectives are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance.~~
- G. ~~We concur with the Kern County Sheriff, that medical marijuana cultivation in Kern County poses an urgent and immediate threat to the public peace, health, and safety. Several medical marijuana grows have recently emerged in Kern County which are very visible to the public, and easily accessible by the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. During the current harvest and processing season there is an immediate threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows.~~
- H. ~~Medical marijuana grows create a nuisance and threaten the safety and property of nearby land owners and their families. If medical marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.~~
- I. ~~Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains~~

~~harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.~~

- ~~J. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.~~
- ~~K. Kern County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing access to medical marijuana for ill residents.~~
- ~~L. Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the act except as mandated by state law.~~
- ~~M. Nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law.~~
- ~~N. Kern County's unique geographic conditions, which cover approximately eight thousand two hundred (8,200) square miles and include dense forested areas, mountainous areas and large sparsely populated areas, provide conditions favorable to illicit marijuana cultivation.~~
- ~~O. Enforcement of the medical marijuana cultivation ordinance poses unique challenges due to the seasonal nature of the cultivation process, the financial incentive to violate the ordinance in order to sell marijuana illegally, the potential financial rewards from illegal cultivation that increase as the magnitude of the violation increases and the number of parties often involved in cultivation efforts that violate this chapter. Because of those challenges, the existing administrative penalty ordinance, Chapter 8.54, is not well suited to formulate a penalty proportional to the misconduct involved in violating the cultivation ordinance and is inadequate to deter violations. Therefore, a separate administrative penalty section unique to the medical marijuana cultivation ordinance is necessary.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.020 Purpose and intent.~~

~~It is the purpose and intent of this Chapter pursuant to Government Code Section 25123(d) to immediately prohibit the large scale cultivation of medical marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens of Kern County.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.030 Relationship to other laws.~~

~~This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the board that this chapter shall be interpreted to be compatible and consistent with federal, county, and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this Code found to be in conflict.~~

~~(Ord. No. G-8556, § 2, 5-19-15)~~

~~5.85.040 Definitions.~~

~~For purposes of this chapter, these words and phrases shall be defined as follows:~~

- ~~A. "County" means the County of Kern or the unincorporated area of the county of Kern as required by the context.~~
- ~~B. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one (1) or more marijuana plants or any part thereof in any location.~~
- ~~C. "Day" means calendar day.~~
- ~~D. "Enforcing officer" means any public official charged with the responsibility of enforcing this chapter.~~
- ~~E. "Immediate threat to public health and safety" includes the cultivation of marijuana (1) in any building or other structure that does not comply with the County's building code and poses an immediate risk of physical harm to its occupants; (2) in any location that is not secured against unauthorized entry; (3) in any location that is accessible by any person under the age of eighteen (18); or (4) in any location where booby trap devices are used.~~
- ~~F. "Marijuana" and "marijuana plant" shall have the same definition as "marijuana" in California Health and Safety Code Section 11018 as it now reads or as amended and shall include any clone and any mature or immature marijuana plant.~~
- ~~G. "Medical marijuana" means marijuana or marijuana plant used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq.~~
- ~~H. "Medical marijuana collective" or "dispensary" means any operation, including a store-front facility or structure, mobile facility, or delivery service, wherein medical marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to primary caregivers, and qualified patients, as defined by this chapter.~~

~~A "medical marijuana collective" or "dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use~~

~~complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.7 et seq.~~

~~I. "Primary caregiver" shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.~~

~~J. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.~~

~~K. "Responsible party" means any individual, association, partnership, joint venture, government entity, industry, corporation, medical marijuana collective, marijuana cooperative, or any other entity engaged in the cultivation of medical marijuana in violation of this chapter, any individual or entity owning the real property on which the cultivation takes place and any individual or entity leasing or possessing the real property on which the cultivation takes place.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.050 Medical marijuana cultivation prohibited.~~

~~A. Outdoor cultivation of medical marijuana is prohibited in all areas of the county. Indoor cultivation of medical marijuana is prohibited in all areas of the county.~~

~~B. This section shall not apply to cultivation of twelve (12) or fewer medical marijuana plants on any legal parcel of record.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.060 Prohibited medical marijuana cultivation declared a public nuisance.~~

~~The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this chapter, within the county is declared to be a public nuisance and is subject to abatement under Chapter 8.44; and each responsible party is subject to administrative penalties under Section 5.85.075.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.070 Criminal penalties for violation.~~

~~Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail, or a fine of one thousand dollars (\$1,000.00). Violators shall be subject to any other enforcement remedies available to the county under any applicable state or federal statute, the Kern County Ordinance Code, or pursuant to any other lawful power the county may possess.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~5.85.075 Administrative civil penalties for violation of medical marijuana cultivation limit.~~

~~A. Each day that more than twelve (12) medical marijuana plants are being cultivated on any legal parcel of record shall constitute a separate and distinct violation and shall be subject to all remedies provided in Section 5.85.075. Each medical marijuana plant grown in excess of twelve (12) on any legal parcel of record shall constitute, in and of itself, a separate and distinct violation of this chapter and shall be subject to all remedies provided in this section.~~

~~B. In determining the amount of any administrative penalty, the enforcing officer shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any harm caused by the violation or violations, any prior history of violations, the degree of culpability, the responsible parties' ability to pay the penalty, the market value of the marijuana plants being cultivated in violation of this chapter, the assessed value of the land on which the violation or violations occurred and any other factors in furtherance of justice. The imposition of administrative penalties is not an exclusive remedy, but is in addition to all other civil and criminal remedies available to the county to remedy violations of this chapter.~~

~~C. Administrative penalties for violation of this chapter shall be assessed as follows:~~

~~1. A penalty up to one thousand dollars (\$1,000.00) for violation of this Chapter at the time a notice of violation is served on the responsible party or parties and either:~~

~~2. a. A penalty up to one thousand dollars (\$1,000.00) per day for each day a violation remains unabated past the deadline set forth in the notice of violation; or~~

~~b. For every plant being cultivated over the twelve-plant limit established by this chapter, a per plant penalty to be administered according to the following schedule for each day a violation remains unabated past the deadline set forth in the notice of violation:~~

Number of Plants Under Cultivation in Excess of 12	Per Plant Per Day Penalty
1—10	Up to \$25.00
11—20	Up to \$50.00
21—30	Up to \$75.00
31—40	Up to \$100.00
41—50	Up to \$150.00
51 or more	Up to \$300.00

~~D. The enforcing officer shall begin the administrative process by issuance of a notice of violation.~~

~~If the violation does not create an immediate threat to health or safety, the enforcing officer shall provide for a reasonable period of time, not to exceed five (5) days from the date the notice of violation is served, for the responsible party or parties to abate the cultivation of all marijuana plants being cultivated in excess of twelve (12). If within the time period stated in the notice of violation the responsible party or parties completely remedy the violation, then the enforcing officer will take no further enforcement action relative to the excess cultivation violation other than collection of the administrative penalty imposed pursuant to subsection C.1.~~

~~If the violation creates an immediate threat to public health and safety, the violation may be summarily abated pursuant to Chapter 8.44.~~

~~E. The notice of violation shall be issued on a form containing:~~

- ~~1. The name and address of the responsible party or parties;~~
- ~~2. The address of the real property where the violation occurred;~~
- ~~3. A statement of the acts, events or conditions which resulted in violation of this chapter, including a reference to this chapter and the date(s) of occurrence;~~
- ~~4. The amount of the administrative penalty to be imposed pursuant to subsection C.1.;~~
- ~~5. The number of days the responsible party or parties have to abate the violation or be subject to the imposition of additional administrative penalties pursuant to subsection C.2.;~~
- ~~6. Identification of appeal rights, including the time the notice of violation may be appealed to the board of supervisors;~~
- ~~7. Notification that appeal to the board of supervisors does not toll the daily accrual of administrative penalties; and~~
- ~~8. The signature of the public official issuing the notice of violation and the date the notice was issued.~~

~~A statement of financial condition form shall accompany the notice of violation.~~

~~F. Following expiration of the time period for abatement stated in the notice of violation, if all plants being cultivated in excess of twelve (12) have not been abated, then the enforcing officer may issue a notice of violation and imposition of daily administrative penalty, which shall be issued on a form containing:~~

- ~~1. The name and address of the responsible party or parties;~~
- ~~2. The address of the real property where the violation occurred;~~
- ~~3. A statement of the acts, events or conditions which resulted in violation of this chapter, including a reference to this chapter and the date(s) of occurrence;~~
- ~~4. That the time period allowed for abatement has lapsed and the violation has not been abated;~~
- ~~5. The amount of the daily administrative penalty to be imposed, the reasons for it and that the penalty will be imposed each day the violation remains unabated;~~

- ~~6. Identification of appeal rights, including the time within which the notice of violation and imposition of daily administrative penalty may be appealed to the board of supervisors;~~
 - ~~7. Notification that appeal to the board of supervisors does not toll the daily accrual of administrative penalties; and~~
 - ~~8. The signature of the public official issuing the notice of violation and the date the notice was issued.~~
- ~~G. The notice of violation and the notice of violation and imposition of daily administrative penalty may be combined with a notice and order to abate issued pursuant to Chapter 8.44.~~
- ~~H. All notices provided for in this chapter shall be served by first class mail, postage prepaid, as follows:~~
- ~~1. On the responsible party or parties at the address of the real property where the violation occurred;~~
 - ~~2. On the real property owner(s) at any address appearing on the last equalized County assessment roll; and~~
 - ~~3. The last known address of any responsible party if other than the real property where the violation occurred.~~

~~Service made as provided in this chapter shall be effective on the date of mailing.~~

- ~~I. In lieu of personally serving any of the notices as provided in subsection H., service of the notices may be made as follows:~~
- ~~1. By leaving a copy during usual business hours with the person apparently in charge of the responsible party's place of business and thereafter mailing by first class mail, postage prepaid, a copy to the responsible party at the address where the copy was left; or~~
 - ~~2. By leaving a copy at the responsible party's dwelling or usual place of abode and thereafter mailing by first class mail, postage prepaid, a copy to the responsible party at the address where the copy was left; or~~
 - ~~3. If the responsible party has a property manager or rental agent overseeing the premises, service may be effected as provided in subsection I.1. or I.2. on the manager or rental agent; or~~
 - ~~4. If a responsible party or parties cannot be located or served as provided in subsection I.1., I.2., or I.3., then by posting the property with the Notice and mailing a copy of the notice by first class mail, postage prepaid, to the address of the real property where the violation occurred or is occurring.~~
- ~~J. The failure of any responsible party or other person to receive any notice required to be given or posted pursuant to this chapter shall not affect in any manner the validity of any proceedings taken pursuant to this chapter.~~
- ~~K. The notice of violation and the notice of violation and imposition of daily administrative penalty shall inform the recipients of their right to request a hearing before the board of supervisors in accordance with this chapter. If such a hearing is not requested within ten (10) days after issuance of the notice,~~

~~the proposed penalty shall become final and conclusive, and the person or persons to whom the notice was issued shall immediately make payment of the penalty amount to the county.~~

~~Filing an appeal shall not toll the daily accrual of administrative penalties.~~

~~A hearing shall be requested by completion of a request for hearing form and returning it to the address stated on the form within ten (10) days after issuance of the notice.~~

~~L.— If any recipient of a notice of violation or the notice of violation and imposition of daily administrative penalty requests a hearing before the board of supervisors, the person shall be notified by first class mail, postage prepaid, when the matter is set for hearing. Whenever possible, the hearing shall be set within fifteen (15) days after the request is made.~~

~~If the violation has been abated, the hearing notification shall state the final amount of the penalty to be imposed. If the violation has not been abated, the notification shall state the amount of the penalty as of the time of the notification and the estimated amount the penalty will be as of the time of the board hearing if the violation remains unabated.~~

~~After the hearing, the board may impose, modify, or disapprove, in whole or in part, by its own order, the penalty set forth in the notice. The decision of the board shall be final and conclusive. Any order of the board shall become effective upon issuance and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in the board's order shall be made to the county within twenty (20) days of service of the order, unless timely appealed to the Superior Court.~~

~~M.— Interest shall accrue on all amounts due under this section at the legal rate, from the effective date of the administrative penalty order to the date payment is made pursuant to the laws applicable to civil money judgments.~~

~~In addition to any other legal remedy, whenever the full amount of the administrative penalty has not been fully satisfied within thirty (30) days after the penalty becomes final, the amount owed may be declared a lien on real property owned by the responsible party or parties pursuant to Section 8.54.130 and may also be declared a special assessment against real property owned by the responsible party or parties pursuant to Section 8.54.130. In addition, the county may withhold issuance of licenses, permits and other entitlements for any property owned, possessed or leased by the responsible party whenever an administrative penalty resulting from a violation of this chapter remains unpaid.~~

~~N.— Administrative penalties imposed pursuant to this chapter shall also constitute a personal obligation of each responsible party. In the event that administrative penalties are imposed on two (2) or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the county may prosecute a civil action to collect any administrative penalty imposed pursuant to this chapter.~~

~~O.— The payment of administrative penalties does not bar the county from taking any other enforcement action regarding a violation that is not corrected within the time period stated in the notice of violation. This chapter does not supersede Kern County Ordinance Code Chapter 8.54.~~

~~(Ord. No. G-8556, § 2, 5-19-15)~~

~~5.85.080 - Severability.~~

~~If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.~~

~~(Ord. No. G 8556, § 2, 5-19-15)~~

~~Chapter 5.86—MORATORIUM ON ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSARIES³¹~~

Sections:

Footnotes:

~~(3)~~

~~**Editor's note**—Ord. No. G 8696, § 2, adopted April 4, 2017, amended ch. 5.86 in its entirety to read as herein set out. Former ch. 5.86, §§ 5.86.010—5.86.030, pertained to similar subject matter, and derived from Ord. No. G 8630, §§ 1—3, adopted May 10, 2016; and Ord. No. G 8646, §§ 2 and 3, adopted June 21, 2016.~~

~~5.86.010—Publication and effective date.~~

~~This ordinance shall be published in accordance with Government Code Section 25124, and it shall take effect and be in full force on and after the 4th day of April, 2017, which extends the original effective date of May 10, 2016, of Ordinance 8630.~~

~~(Ord. No. G 8696, § 2, 4-4-17)~~

~~5.86.020—Declaration of urgency.~~

- ~~1.—In 1996, the voters of the state of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996").~~
- ~~2.—The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited specified circumstances.~~
- ~~3.—On January 1, 2004, SB 420 (Chapter 875 of the Statutes of 2003) became effective and was intended to clarify the scope of the Compassionate Use Act of 1996 and to allow cities, counties, and other local governing bodies to adopt and enforce rules and regulations consistent with SB 420.~~
- ~~4.—On March 31, 2009, the board of supervisors repealed existing local regulations regarding medical marijuana dispensaries and put in their place Ordinance G 7849, which amended Chapter 5.84 of Title 5 of the Kern County Ordinance Code to provide for limited regulation of the location of medical marijuana dispensaries. The new ordinance contained no regulations addressing the criminal and nuisance activity that has been associated with marijuana dispensaries.~~
- ~~5.—In 2010, the board of supervisors passed urgency Ordinance G 8079 imposing a moratorium on the establishment of new medical marijuana dispensaries and prohibited existing dispensaries from~~

relocating within Kern County. The moratorium was extended twice, the last time by Ordinance G-8177.

6. In 2011, the board of supervisors proposed and then adopted Ordinance G-8191 banning all medical marijuana dispensaries. Ordinance G-8191 was challenged by a referendum protest petition. In response to the referendum protest, in 2012, the board of supervisors voted to place on the June 5, 2012 ballot a measure designed to regulate medical marijuana dispensaries under Kern County's zoning ordinance. The ballot measure was designated on the ballot as Measure G. The board of supervisors also acted to repeal, in its entirety, Chapter 5.84 of Title 5 of the Kern County Ordinance Code.
7. Measure G passed with approximately sixty-nine percent (69%) of the vote, but was invalidated in 2014 by the Kern County Superior Court for non-compliance with the California Environmental Quality Act. The Fifth District Court of Appeal upheld that ruling in April of 2016.
8. In 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729 that local government agencies have authority to ban and otherwise regulate medical marijuana activities under the local agencies' police powers.
9. In 2015, the state of California adopted the Medical Marijuana Regulation and Safety Act which regulates the commercial medical marijuana industry through a licensing and permit process. The legislation expressly recognizes the power of local jurisdictions to regulate medical marijuana activities under the local jurisdictions' police powers. Regulations implementing the Medical Marijuana Regulation and Safety Act have yet to be issued by the state.
10. On April 5, 2016, the Fifth District Court of Appeal ruled in the case of *County of Kern v. T.C.E.F., Inc.* that the Kern County board of supervisors acted in violation of Elections Code 9145 when it repealed Chapter 5.84 of Title 5 of the Kern County Ordinance Code in 2012, thus reinstating into law an ordinance chapter and regulatory scheme that was repealed.
11. The California Supreme Court declined to grant review of the Fifth District Court of Appeal decision in *County of Kern v. T.C.E.F., Inc.* and Ordinance G-7849 was reinstated.
12. Only four (4) of the current dispensaries operating in the unincorporated areas of Kern County came into existence while Ordinance G-7849 was in effect, and two (2) of them were found by a court of law not to have been operating legally under Ordinance G-7849.
13. Since 2009, both the California Supreme Court and the California Legislature have recognized the power of local governments to ban and otherwise regulate medical marijuana.
14. The ruling of the Fifth District Court of Appeal in *County of Kern v. T.C.E.F., Inc.* has created uncertainty as to how and under what circumstances the county may regulate current dispensaries and any future dispensaries and how such local regulation will interact with the new state legislation and its implementing regulations. In addition, it has created uncertainty as to the legal status of almost all dispensaries currently operating in the unincorporated areas of Kern County.
15. The ruling of the Fifth District Court of Appeal has also created a condition in which individuals may believe there is no longer any legal bar to operating a medical marijuana dispensary in Kern County and will be encouraged to open additional medical marijuana dispensaries, thus magnifying the adverse health, safety, and welfare impacts articulated below.

16. ~~Since 2014, Kern County has seen a proliferation of new medical marijuana dispensaries even though such a property use is not permitted under the county's zoning ordinance, and operators are in violation of local law. The proliferation of new marijuana dispensaries has led to increased enforcement efforts, which have resulted in a multiplicity of court proceedings with the attendant expenditure of public resources. Since the establishment of the moratorium on May 10, 2016, approximately nineteen (19) new dispensaries have attempted to open in violation of the moratorium.~~
17. ~~A September, 2015, federally-commissioned study prepared by the Rocky Mountain High Intensity Drug Trafficking Area regarding the impact of marijuana legalization in Colorado concluded, among other things, that marijuana-related traffic deaths increased ninety-two percent (92%) in Colorado between 2010—2014, marijuana use among youth ages twelve (12) to seventeen (17) had increased, marijuana-related hospitalizations increased by forty-six percent (46%) over a three-year period, and marijuana ingestions by children under twelve (12) increased from two (2) in 2009 to sixteen (16) in 2014.~~
18. ~~Data from other jurisdictions, such as Colorado, where recreational use of marijuana has been legalized suggests that the proliferation of marijuana dispensaries can lead to an increase in criminal activity. For example, in 2009, the Denver Police Department estimated that approximately seventeen percent (17%) of marijuana retail shops had been robbed or burglarized in the preceding twelve (12) months. By 2014, NBC News reported that the annual robbery and burglary rate had increased to fifty percent (50%). A 2013 report on the Colorado marijuana industry revealed that nearly one-third (1/3) of the crimes committed in Denver occur within one thousand (1,000) feet of a medical marijuana dispensary.~~
19. ~~These reports are consistent with the findings of the California Police Chiefs Association's Task Force on Marijuana Dispensaries issued in 2009 which include an increased risk of burglary, drug-dealing, sales of marijuana to minors, loitering, heavy vehicle and foot traffic, increased noise, and robberies of customers.~~
20. ~~The Kern County Code Compliance Division reports that some business owners located adjacent to or in the vicinity of a medical marijuana dispensary complain of heavy foot traffic and noise emanating from the dispensary. Business owners have also attributed loss of business to the proximity of their business to a dispensary, citing customer complaints and fears about the dispensary.~~
21. ~~The Kern County Sheriff's Office reports that according to its analyses of crime data for the period of April 1, 2015, through March 31, 2016, an average of sixty-one (61) reports of criminal activity occurred within six hundred sixty (660) feet (one-eighth (1/8) of a mile) of medical marijuana dispensaries. The highest concentration of crimes reported within six hundred sixty (660) feet of any one (1) dispensary was one hundred seventy-six (176) and the lowest was six (6). For the same time period, the sheriff's office reports that marijuana dispensaries averaged four (4) calls for service. The highest call volume was twenty-seven (27) and the lowest was zero (0). For the higher call volume dispensaries, the most commonly reported crime was burglary.~~
22. ~~A 2016 study of the traffic impacts of marijuana dispensaries in Colorado concluded that marijuana dispensaries generate ten (10) times more traffic than a typical retail store and five (5) times more traffic than a pharmacy. The traffic impacts on medical marijuana dispensaries in Kern County have not been studied. The air quality throughout most of Kern County is poor as Kern County is in extreme non-attainment for criteria pollutants with the detrimental health impacts that result from the presence of such pollutants. The traffic impacts of dispensaries need to be studied locally in order to develop an appropriate legislative response to the proliferation of medical marijuana dispensaries.~~

- ~~23. In November, 2016, the California electorate voted to legalize the commercial sale, distribution, manufacture and cultivation and personal use of recreational marijuana and marijuana products. This new regulatory scheme known as the Adult Use of Marijuana Act (Proposition 64) provides for regulation at the local level which will dictate whether a state license to sell, distribute, manufacture or cultivate recreational marijuana may be issued beginning in January, 2018. Without a state license, no one may legally sell, distribute, manufacture or cultivate recreational marijuana on a commercial level in the state of California. Dispensaries currently operating legally in Kern County may be required to shut down through an amortization program, depending upon the type of regulatory program adopted by the county of Kern. Therefore, a moratorium is needed to maintain the status quo so that more individuals do not make the investment in a dispensary only to lose that investment under a changed regulatory landscape.~~
- ~~24. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries and the impact on local enforcement efforts on October 5, 2015, the board of supervisors requested county staff to study the imposition of a ban on medical marijuana dispensaries, deliveries of medical marijuana, and cultivation of medical marijuana. Since that time, the evaluation has been ongoing. However, in light of recent legal developments, staff is also exploring alternatives to a ban, including any land use regulations that may need to be included in Kern County's zoning ordinance, related to the issues associated with marijuana dispensaries and the potential impact such facilities may have on the public health, safety, and welfare of the citizens of Kern County. In February, 2017, the county held its first scoping meeting on the environmental impact report (EIR) that is undergoing preparation to evaluate the impacts on the environment of the various alternatives open to the county relative to regulation of commercial and medical marijuana. The stated goal of this effort is to have proposed regulatory options ready for consideration by the board of supervisors in fall of 2017. The county must have its regulatory system in place by no later than December of 2017 in anticipation of the state of California's intent to begin issuing licenses in January, 2018 to cultivate, distribute, manufacture and sell recreational marijuana and medical marijuana.~~
- ~~25. The board of supervisors has the requisite authority pursuant to Government Code Section 65858 to adopt an interim urgency ordinance prohibiting uses inconsistent with regulations contemplated by this board to be adopted after completion of a study. The moratorium established by this urgency ordinance is intended to address not only the ongoing secondary impacts of criminal and nuisance activities caused by medical marijuana dispensaries, but also degradation of air quality, child safety and traffic safety issues raised by the proliferation of marijuana and marijuana-related businesses as highlighted in the referenced studies as well as the impending state-wide legalization of commercial cannabis cultivation, manufacture and sales as noted above. This set of circumstances is new and did not exist in 2010 when the first moratorium was passed.~~
- ~~26. The adoption of a moratorium on new medical marijuana dispensaries is not preempted by the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, or the Adult Use of Marijuana Act and is within the scope of authority conferred on Kern County by Government Code Section 65858(a).~~
- ~~27. The sale, use, possession, and distribution of marijuana remains illegal under the federal Controlled Substances Act. There is currently a conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries.~~
- ~~28. Based on the foregoing, the board of supervisors finds that allowing any new medical marijuana dispensaries to locate within the unincorporated areas of Kern County or allowing any existing dispensaries to relocate within the unincorporated areas of Kern County, pending Kern County's study~~

~~of the potential impact of such facilities, poses a current and immediate threat to the public's health, safety, and welfare.~~

~~29. A moratorium on the opening of new medical marijuana dispensaries and relocation of existing dispensaries was originally adopted by the board of supervisors on May 10, 2016 and was extended for ten (10) months and fifteen (15) days by ordinance amendment on June 21, 2016. Government Code Section 65858(a) authorizes the extension of the moratorium for up to one (1) additional year.~~

~~(Ord. No. G 8696, § 2, 4-4-17)~~

~~5.86.030 Moratorium imposed.~~

~~From and after the effective date of Ordinance G 8630, May 10, 2016, no medical marijuana dispensary, other than those in existence and operating on the effective date of this ordinance, is permitted within the unincorporated areas of Kern County during the period of time this ordinance is effective. For purposes of this ordinance, a change in location of an existing medical marijuana dispensary within the unincorporated areas of Kern County will be considered to be a new use. The term of this ordinance shall be governed by the provisions of Government Code Section 65858.~~

~~Effective June 21, 2016, the moratorium established herein on May 10, 2016, was extended for ten (10) months and fifteen (15) days pursuant to Government Code Section 65858(a) and is set to expire on May 6, 2017.~~

~~For purposes of this chapter, "medical marijuana dispensary" means any facility or location where medical marijuana is made available to and/or distributed by a person to any of the following: a primary caregiver, a qualified patient, or a person with a medical authorization or identification card, in accordance with California Health and Safety Code Section 11362.5 or 11362.7, et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by the Kern County Ordinance Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.~~

~~(Ord. No. G 8696, § 2, 4-4-17)~~

~~5.86.040 Extension of moratorium.~~

~~Effective April 4, 2017, the moratorium established on May 10, 2016, shall be extended for one (1) year pursuant to Government Code 65858(a).~~

~~(Ord. No. G 8696, § 2, 4-4-17)~~

~~5.86.050 Violation; penalty; enforcement.~~

~~Any person, firm or corporation violating this moratorium is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) or being imprisoned in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. County of Kern may seek injunctive relief in superior court to abate any violation of this chapter or to prohibit any violation of this chapter. Violators shall be subject to any other enforcement available to the county under any applicable state or federal statute, the Kern County Ordinance Code, or pursuant to any other lawful power the county may possess.~~

~~(Ord. No. G-8696, § 2, 4-4-17)~~

~~5.86.060 Retroactive effect.~~

~~This chapter shall have retroactive effect as to any individual, association, partnership, corporation, cooperative or other entity that has opened a new medical marijuana dispensary or located an existing medical marijuana dispensary within the unincorporated areas of Kern County on or after May 10, 2016.~~

~~(Ord. No. G-8696, § 2, 4-4-17)~~

Amendments to Title 13 – PARKS, RECREATION AREAS AND PUBLIC PLACES

Chapter 13.04 – USE RESTRICTIONS GENERALLY

13.04.015 - Definitions.

- A. "Alcoholic beverage" shall have the meaning given in Section 23004 of the Business and Professions Code of the State of California.
- B. "Applicant" shall mean any person, group or organization applying for use of a building under this chapter or on whose behalf an application for such use is made.
- C. "Building" shall mean any of the following buildings and shall include any parking lot, site, sidewalk, or access drive appurtenant to, used or occupied during an event:
 - 1. "Veterans' building": Those buildings constructed pursuant to Chapter 2 (commencing with #1260) of Division 6 of the California Military and Veterans Code, primarily for the use or benefit of veterans' associations.
 - 2. "Senior centers or buildings": Those buildings constructed or acquired to provide facilities where older residents can pursue meaningful civic, cultural, educational and recreational activities, as well as being a place where supportive services can be efficiently and effectively delivered to older residents.
 - 3. "Community buildings": Those buildings constructed or acquired pursuant to Chapter 10 (commencing with #10900) of Part 7 of Division 1 of Title 1 of the California Education Code, used for activities which contribute to the physical, mental or moral development of the individual or group participating therein.
 - 4. "Recreation buildings": Those buildings located in county parks used by the public for recreation purposes.
- D. "Commercial user" shall mean an individual, association or company which does not qualify for nonprofit status under the Internal Revenue Codes or corresponding state codes and whose planned use of a building will involve public relations activities and/or selling or marketing a product or service.
- E. "Director of park and recreation" shall include the director or his/her authorized representative.
- F. "Equipment" shall include any furniture and furnishings, decorations, utensils, electrical or electronic equipment, hardware, tools or cleaning equipment owned or controlled by the county and which is attached to, kept, stored or used in a building.
- G. "Fireworks" as used in this section, includes any and all fireworks as defined in Sections 12505 and 12529 of the California Health and Safety Code.
- H. "Gross receipts" as used in this section, shall mean all revenue received by applicant with respect to the applicant's use of county property.
- I. "Marijuana" or "cannabis" shall have the same definition as in California Health and Safety Code Section 11018.1 as it now reads or as amended.
- J. "Marijuana products" or "cannabis products" shall have the same definition as in California Health and Safety Code Section 11018.1 as it now reads or as amended.
- K. "Motion pictures" shall include commercial movie, video camera and other commercial motion photography.

13.04.210 - Cannabis products in any Kern County Park or other public place.

It is unlawful for any person to light, smoke, ingest, discard, or use in any other way, any cannabis product at any time in any Kern County Park or other Kern County public place. This prohibition includes the parking areas of such parks, and therefore cannabis products are not permitted in the parking areas of

any Kern County Park or other Kern County public place. Violation of this section is an infraction and punishable by a fine not exceeding one hundred dollars (\$100.00) for persons 21 years of age or older. For persons 21 years of age or younger, a violation of this section is an infraction and punishable by requiring a person to complete four (4) hours of a drug education program or counseling, and up to ten (10) hours of community service, over a period not to exceed sixty (60) days once the drug education program or counseling and community service opportunity are made available to the person. These prohibitions shall be in accordance with California Health and Safety Code Sections 11362.3 and Section 11362.4.

13.04.220 - Cannabis products within 1,000 feet of any school, day care center, or youth center while children are present.

It is unlawful for any person to light, smoke, ingest, discard, or use in any other way, any cannabis product at any time within 1,000 feet of any school, day care center, or youth center while children are present. This prohibition does not apply to grounds of a private residence and only if such smoking is not detectable by others on the grounds of any school, day care center, or youth center while children are present. Violation of this section is an infraction and punishable by a fine not exceeding two hundred fifty dollars (\$250.00) for persons 21 years of age or older. For persons 21 years of age or younger, a violation of this section is an infraction and punishable by requiring a person to complete four (4) hours of a drug education program or counseling, and up to twenty (20) hours of community service, over a period not to exceed ninety (90) days once the drug education program or counseling and community service opportunity are made available to the person. These prohibitions shall be in accordance with California Health and Safety Code Sections 11362.3 and Section 11362.4.

DRAFT

Amendments to Title 19 - Chapter 19.114 ENFORCEMENT AND PENALTIES

19.114.060 – Misdemeanor.

~~Any person, firm, corporation, owner of the land or possessor who violates or who causes, permits or allows a violation of any provision of tis title is guilty of a misdemeanor and is subject to penalties and procedures as described in Chapter 8.54 of the ordinance code. Any person, business, or owner or possessor of any property who violates this title, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, is guilty of a misdemeanor and,~~ upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not exceeding six (6) months, or by both such fine and imprisonment. Each day the violation of this title continues shall be considered a separate offense.

19.114.070 - Administrative penalties.

~~In addition to the other provision contained in this chapter, property owners of any property in violation of the provisions of this title are.~~ Any person, business, or owner or possessor of any property who violates this title, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, is subject to the regulations pertaining to the imposition and collection of administrative penalties as provided for in [Chapter 8.54](#) of the Kern County Ordinance Code.

19.114.080 - ~~Injunctive relief.~~ Civil Action.

~~The county may seek injunctive relief by the building official and/or the district attorney in superior court to abate any violation of this title or to prohibit any violation of this title. Injunctive relief may be sought at any time, including prior to the issuance or compliance with the notice of violation if, in the opinion of the building official, an alleged or anticipated violation of this title may be injurious to the public health or safety. Any person, business, or owner or possessor of any property who violates this title, or who, with the lawful authority to prevent it, causes, permits or allows such a violation, shall be liable in a civil action brought in the name of the county, or in the name of the people of the State of California by the district attorney, in any competent jurisdiction of the state court system for the following: 1) equitable relief which may be issued by the court in order to enjoin any conduct, past conduct, or proposed conduct which constitutes a violation of this title; 2) all costs incurred by the county in enforcing the provisions of this title, including but not limited to, any costs of investigation and abatement; 3) reasonable attorney fees incurred by the county in enforcing the provisions of this title, if the county elects to specifically plead for the recovery of such attorney fees in the complaint, otherwise attorney fees shall not be recoverable by either party; and 4) civil penalties which shall be issued by the court, in an amount not to exceed one thousand dollars (\$1000.00) per violation, after considering the relevant circumstances of the case, including but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the of misconduct, the duration of the misconduct, the willfulness of the misconduct, and the defendant’s assets, liabilities, and net worth. If applicable, each day a violation of this title continues shall be considered a separate offense. The enforcement provisions and remedies set forth in this section are not exclusive, but are in addition to any other enforcement remedy available to the county under any applicable state or federal statute, the Kern County Ordinance Code, or any~~

other lawful power the county may possess. If any part of this section is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality, shall not affect the validity, lawfulness, or constitutionality of any other part of this section.

REPEAL

CHAPTER 19.120

MEDICAL MARIJUANA DISPENSARIES

SECTIONS:

- ~~19.120.010 PURPOSE AND APPLICATION~~
- ~~19.120.020 DEFINITIONS~~
- ~~19.120.030 LOCATION REQUIREMENTS~~
- ~~19.120.040 DEVELOPMENT AND PERFORMANCE STANDARDS~~
- ~~19.120.050 SITE DEVELOPMENT PLAN — REQUIRED~~
- ~~19.120.060 SITE DEVELOPMENT PLAN — APPLICATION CONTENTS~~
- ~~19.120.070 SITE DEVELOPMENT PLAN — REVIEW AND APPROVAL~~
- ~~19.120.080 SITE DEVELOPMENT PLAN — DENIAL AND APPEAL~~
- ~~19.120.090 SITE DEVELOPMENT PLAN — REVOCATION~~
- ~~19.120.100 TIME LIMIT ON DEVELOPMENT APPROVAL~~
- ~~19.120.110 PENALTIES FOR VIOLATION~~
- ~~19.120.120 SEVERABILITY~~
- ~~19.120.130 AMENDMENT AND REPEAL~~

19.120.010 PURPOSE AND APPLICATION

The purpose of this Chapter is to regulate the location, operation, and establishment of Medical Marijuana Dispensaries, in order to promote the health, safety, and general welfare of the citizens of the County. Medical Marijuana Dispensaries have serious secondary effects on the community. These secondary effects include, but are not limited to the following: criminal activity, loitering, increased traffic, noise, litter and a loss of trade for other business located nearby by interference. If not properly regulated, Medical Marijuana Dispensaries are harmful to the welfare of the surrounding community and its residents and can constitute a public nuisance.

Medical Marijuana Dispensaries shall not be established in any zone district other than the M-2 PD (Medium Industrial—Precise Development Combining District) and M-3 PD (Heavy Industrial—Precise Development Combining District) Districts. Medical Marijuana Dispensaries must be fully compliant with all requirements of Chapter 19.80 (Special Development Standards). The establishment of a Medical Marijuana Dispensary in the County that is not in full compliance with the provisions of this Title is hereby prohibited and is declared a public nuisance and is subject to abatement under Chapter 8.44 and administrative penalties under Chapter 8.54. No permit or any other applicable license or entitlement for use shall be approved or issued by any County personnel endorsing the establishment of a Medical Marijuana Dispensary within the County.

19.120.020 DEFINITIONS

For purposes of this Chapter, these words and phrases shall be defined as follows:

- A. "County" means the County of Kern or the unincorporated area of the County of Kern as required by the context.

- A. ~~"Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.~~
- C. ~~"Medical Marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.5 et seq.~~
- D. ~~"Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.~~
- E. ~~"Medical Marijuana Dispensary" or "Dispensaries" means any operation, including a store front facility or structure, mobile facility, or delivery service, wherein medical marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to primary caregivers or qualified patients, as defined by this Chapter.~~
- ~~"Medical Marijuana Dispensary" or "Dispensaries" shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.7 et seq.~~
- F. ~~"Primary caregiver" shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.~~
- G. ~~"Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.~~

19.120.030 LOCATION REQUIREMENTS

- A. ~~In addition to the zone district restrictions, Medical Marijuana Dispensaries shall not be located within one (1) mile of the following whether or not located within the County:~~
- ~~1. Any public or private school;~~
 - ~~2. Any publicly or privately operated daycare center;~~
 - ~~3. Any park owned or maintained by a public entity; and~~
 - ~~4. Church, chapel, or other recognized place of worship.~~
- B. ~~Medical Marijuana Dispensaries shall not be located within one (1) mile of any other Medical Marijuana Dispensary. In the event that two Medical Marijuana Dispensaries are within one (1) mile of each other, the Medical Marijuana Dispensary that has submitted a~~

~~compliant and complete site development plan pursuant to this Chapter that has been approved by the Planning Director in writing will be deemed first in time.~~

- ~~C. The distances specified in this Section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building in which the proposed or existing Medical Marijuana Dispensary is established to the nearest property line of a use or zoning district listed above.~~

~~19.120.040 DEVELOPMENT AND PERFORMANCE STANDARDS~~

- ~~A. Medical Marijuana Dispensaries compliant with all other provisions of this Title must operate under the following conditions and restrictions:~~

- ~~1. No marijuana shall be smoked, ingested, or otherwise consumed on the premises of a Medical Marijuana Dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking area(s), walks or other immediate surroundings.~~
- ~~2. No edible products containing marijuana shall be distributed or sold by or on the premises of the Medical Marijuana Dispensary.~~
- ~~3. No person under the age of eighteen (18) shall be permitted on the premises of the Medical Marijuana Dispensary unless he or she is qualified patient or primary caregiver and is accompanied by a parent or legal guardian.~~
- ~~4. No Medical Marijuana Dispensary shall conduct or engage in the sale of any product, good, or service other than medical marijuana.~~
- ~~5. No Medical Marijuana Dispensary shall engage in the manufacture or processing of marijuana in violation of California Health and Safety Code Section 11379.6.~~
- ~~6. No Medical Marijuana Dispensary shall operate between the hours of 8:00 p.m. and 10:00 a.m.~~
- ~~7. No alcohol shall be consumed, made available, sold, offered for sale, given, distributed, traded, or otherwise provided to primary caregivers or qualified patients on the premises of the Medical Marijuana Dispensary.~~

- ~~B. The following performance standards shall apply to all Medical Marijuana Dispensaries:~~

- ~~1. Medical Marijuana Dispensaries shall not be located in any temporary or portable structure.~~
- ~~2. Medical Marijuana Dispensaries shall not include a private patio or café seating on or appurtenant to its premises.~~
- ~~3. Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.~~

4. ~~Off street parking shall be provided at the ratio of one parking space per two hundred and fifty (250) square feet of gross floor area and as specified in Chapter 19.82.~~
5. ~~The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times during business hours.~~
6. ~~Signage shall conform to the requirements of Chapter 19.84 and shall not contain pictorial representations, indicate or advertise the presence or availability of medical marijuana.~~
7. ~~All entrances to a Medical Marijuana Dispensaries shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.~~
8. ~~No residential structure or any other nonconforming structure shall be converted for use as a Medical Marijuana Dispensary.~~

~~19.120.050 SITE DEVELOPMENT PLAN — REQUIRED~~

~~No Medical Marijuana Dispensary shall be established, change or altered until an application for a Medical Marijuana Dispensary site development plan review has been submitted to and approved by the Planning Director in accordance with the procedures set out in this Chapter.~~

~~19.120.060 SITE DEVELOPMENT PLAN — APPLICATION CONTENTS~~

~~An application for site development plan review shall include the following:~~

- A. ~~Name and address of applicant.~~
- B. ~~Name(s) and address(es) of the property owner(s).~~
- C. ~~Assessor's parcel number(s).~~
- D. ~~Legal description of the property.~~
- E. ~~A site development plan drawn at the scale specified by the Planning Director, which includes the following information:~~
 1. ~~Topography and proposed grading.~~
 2. ~~The width, location, and names of surrounding streets.~~
 3. ~~The location, dimensions, ground floor area, and uses of all existing and proposed buildings and structures on the subject property.~~
 4. ~~Proposed landscaping.~~
 5. ~~Streets and parking areas.~~

6. ~~Signs, including location, size, and height.~~
 7. ~~Proposed dedications and improvements in accordance with applicable subdivision improvement standards for the area.~~
 8. ~~Location, height, and material of walls and fences.~~
 9. ~~Other specified uses of the property.~~
 10. ~~North arrow and scale.~~
- F. ~~A narrative description of the proposed development, including the following:~~
1. ~~Acreage or square footage of the property.~~
 2. ~~Height, ground floor area, and total floor area of each building.~~
 3. ~~Building coverage expressed as a percent of the total area of the property.~~
 4. ~~Area of land devoted to landscaping and/or open space usable for recreation purposes and its percentage of the total land area.~~
 5. ~~Method of sewage disposal.~~
 6. ~~Water supply, both domestic and fire.~~
 7. ~~Proposed on-site drainage facilities.~~
 8. ~~Methods of flood control, where appropriate.~~
- G. ~~A narrative description of the nature of the proposed use or development and an explanation of how the proposed Medical Marijuana Dispensary will satisfy the applicable requirements set forth in Sections 19.120.020 through 19.120.040 of this Chapter.~~
- H. ~~Signatures or letter of consent from all property owners.~~

19.120.070 SITE DEVELOPMENT PLAN — REVIEW AND APPROVAL

- A. ~~An applicant for a Medical Marijuana Dispensary pursuant to this Chapter shall submit an application to the Planning Director in the format and number of copies specified by the Planning Director. The application shall contain all the information specified for the application in accordance with this Chapter.~~
- B. ~~The Planning Director shall inform the applicant either verbally or in writing within seven (7) calendar days of receipt that the application is complete or that additional information is needed to complete the application.~~
- C. ~~Within seven (7) calendar days of determining the application is complete, the Planning Director shall approve the plan if he/she determines that the proposed use or development~~

~~standards meets the development standards and conditions specified in the applicable section or sections of this Title or deny the plan if he/she determines that the proposed use or development does not meet the standards and conditions specified in the applicable section or sections of this Title.~~

~~19.120.080 SITE DEVELOPMENT PLAN — DENIAL AND APPEAL~~

~~If the Planning Director denies a plan pursuant to this Chapter, the applicant may appeal such action to the Board of Supervisors.~~

- ~~A. — The applicant may file with the Planning Director a notice of appeal to the action of the Planning Director indicating the basis of appeal within seven (7) calendar days of such action.~~
- ~~B. — The Board of Supervisors shall consider the appeal within thirty (30) days of the filing of such appeal. No public hearing or notice shall be required.~~
- ~~C. — The Board of Supervisors may reverse or affirm the action of the Planning Director. The action of the Board shall constitute a ministerial action and shall be based solely on whether or not the proposed use or development meets the development standards and conditions specified in or established pursuant to the applicable section or sections of this Title.~~

~~19.120.090 SITE DEVELOPMENT PLAN — REVOCATION~~

~~Any site development plan approval issued pursuant to this Chapter may be revoked by the official or decision making body that originally approved the plan by the same procedure under which the approval was issued for any of the following causes:~~

- ~~A. — That any term or condition of the plan has not been complied with.~~
- ~~B. — That the property or portion thereof subject to the plan is used or maintained in violation of any statute, ordinance, law, or regulation.~~
- ~~C. — That the use for which the plan was granted has been so exercised as to be detrimental to the public health or safety or as to constitute a nuisance.~~

~~19.120.100 TIME LIMIT ON DEVELOPMENT APPROVAL~~

~~Any site development Plan approved pursuant to this Chapter shall expire one (1) year after the date of approval, except where building permits have been issued for construction authorized under the approved plot plan, in which case the approved plot plan shall expire after the construction has been completed or on the date building permits are cancelled.~~

~~19.120.110 PENALTIES FOR VIOLATION~~

- ~~A. — Any person or responsible party violating any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail or a fine of one thousand dollars (\$1,000). Violators shall also be subject to any other enforcement remedies, including but not limited to those available to the County under Chapter 19.114 of this Title, any applicable State or federal statute, or other lawful power the County may possess.~~
- ~~B. — Each day a violation is allowed to continue and every violation of the Chapter shall constitute a separate violation and shall be subject to all remedies.~~
- ~~C. — In the event any civil suit or action is brought by the County to enforce the provisions of this Chapter, the person responsible for such violation shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees.~~

~~19.120.120 SEVERABILITY~~

~~If any part of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter.~~

~~19.120.130 AMENDMENT OR REPEAL~~

~~This Chapter may be amended or repealed at any time by the Board of Supervisors without having to seek approval of the voters of the County.~~