

ORDINANCE NO. G-8739

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, REPEALING CHAPTERS 5.84, 5.85, AND 5.86, TITLE 5; AMENDING SECTION 13.04.015 OF CHAPTER 13.04 AND ADDING SECTIONS 13.04.210 AND 13.04.22 TO CHAPTER 13.04, TITLE 13; ADDING SECTION 19.08.055 TO CHAPTER 19.08, TITLE 19; AMENDING SECTIONS 19.114.060, 19.114.070, AND 19.114.080 OF CHAPTER 19.114, TITLE 19; OF THE ORDINANCE CODE RE THE KERN COUNTY CANNABIS LAND USE ORDINANCE (COMMERCIAL CANNABIS BAN)

The following ordinance, consisting of six (6) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern, State of California, at a regular meeting of the Board of Supervisors held on the 24th day of October, 2017, by the following vote:

AYES: Gleason, Scrivner, Maggard, Couch

NOES: Perez

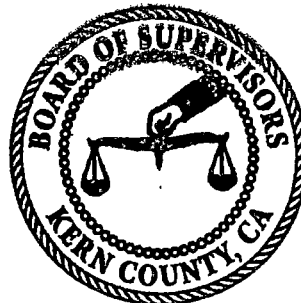
ABSENT: None

Chairman of the Board of Supervisors of the County of Kern, State of California

(SEAL)

ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors



By , Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. 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 24th day of November, 2017.

Section 2. Chapters 5.84, 5.85, and 5.86 of Title 5 of the Ordinance Code are repealed in their entirety.

Section 3. Section 13.04.015 of Chapter 13.04, Title 13 of the Ordinance Code is amended to read as follows:

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.

L. "Nonprofit user" shall mean any governmental entity, or a club, association, corporation or group, which is exempt from income taxation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of the California Revenue and Taxation Code.

1. If the net proceeds and/or benefits from an event will serve solely charitable or community purposes, the sponsoring entity shall be considered a "nonprofit user," irrespective of its status otherwise.

2. "Community purposes" shall mean any recreational, athletic, or educational activity or other service that benefits the community, which is open to all persons on an equal basis, and no part of the earnings from which inure to the benefit of any private person or for a political purpose which would cause an exempt organization to lose its exemption from taxation under federal or state laws. The determination whether an applicant's proposed activity or service in a building serves "community purposes" shall be made by the director of parks and recreation, subject to the appeal provisions of this chapter.

M. "Parking area" shall mean a parking lot or any other area designated or primarily used for parking vehicles of persons accessing the park or recreational area.

N. "Priority user" shall mean any of the following:

1. Veterans' groups shall have reasonable priority in the use of veterans' buildings for social or organization events limited to their members.

2. Senior citizens' groups shall have reasonable priority in the use of senior centers for organizational, social and educational events limited to their members and for activities designed to deliver supportive services to senior citizens.

O. "Private 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 be a private social event.

P. "Safe and sane fireworks" as used in this section, includes any and all fireworks as defined in Section 12529 of the California Health and Safety Code.

Q. "Senior citizens' organization" shall mean an organization of senior adults whose purpose is to facilitate or provide cultural, educational and recreational activities and supportive services, including a nutrition program, for senior adults.

R. "Tobacco products" shall mean any manufactured substance made from the tobacco plant, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco and smokeless tobacco or products prepared from tobacco and designed for smoking and ingestion.

S. "User" shall mean any person, group or organization which applies for or on whose behalf an application is made for use of a building, or which uses a building pursuant to completing an application.

T. "Veterans' organization" shall mean any duly recognized organization of honorably discharged soldiers, sailors or marines of the United States or any of their auxiliaries.

Section 4. Sections 13.04.210 and 13.04.220 are added to Chapter 13.04, Title 13 of the Ordinance Code to read as follows:

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 Section 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 Section 11362.3 and Section 11362.4.

Section 5. Section 19.08.55 is added to Chapter 19.08, Title 19 of the Ordinance Code to read as follows:

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.

1. All provisions of this section shall apply outdoors and indoors.
2. All provisions of this section shall apply to public and private property within the county's jurisdiction.
3. All provisions of this section shall apply to any persons, including primary caregivers and qualified patients.
4. 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:

1. "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.
2. "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code as it now reads or as amended.
3. "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.
4. "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.
5. "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.
6. "County" means the County of Kern or the unincorporated area of the County of Kern as required by the context.
7. "Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, curing, grading, trimming processing, or storage of marijuana in any location.

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

9. "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.

10. "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.

11. "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.

12. "Planning Director" shall refer to the Director of the Planning and Natural Resources Department of the County of Kern.

13. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

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

15. "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: (i) confirmation that the facility complies with all requirements of former Ordinance Code section 5.84.010 for setbacks and appropriate zoning for a pharmacy; and (ii) an inspection has been completed by the Kern County Building Inspection Division of the interior and exterior of the building used for the cannabis dispensary for compliance with the building code; and (iii) 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 Planning and Natural Resources Department 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 ten calendar days after the date of issuance of the order.

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 pursuant to Section 19.06.040 of this title. The appeal shall include supporting documentation and basis for the appeal. The Board 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 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's 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. A determination made by the Board 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.

Section 6. Section 19.114.060, 19.114.070, and 19.114.080 of Chapter 19.114, Title 19 of the Ordinance Code are amended to read as follows:

19.114.060 Misdemeanor.

Any person, business, or owner or possessor of any property who violates this Chapter, 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.

A. Any person, business, or owner or possessor of any property who violates this Chapter, 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.

B. Each day that more than six (6) cannabis 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 this title. Each cannabis plant grown in excess of six (6) 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 Chapter.

C. 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.

D. 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 six-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 6	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

E. 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 six (6). 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 D.1.

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

F. 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 D.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 D.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.

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

G. 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.

H. 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.

I. 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.

J. In lieu of personally serving any of the notices as provided in subsection I., 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 J.1. or J.2. on the manager or rental agent; or

4. If a responsible party or parties cannot be located or served as provided in subsection J.1., J.2., or J.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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

19.114.080 Civil Action.

Any person, business, or owner or possessor of any property who violates this Chapter, 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 (\$1,000.00) 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.

#23H4923

COPIES FURNISHED:	
Lilna	
Planning, Public Works,	
General Services, Fire,	
Env. Health, Co Counsel	
11/8/2017	(12)