

ORDINANCE NO. G-8190

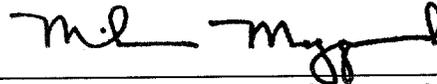
AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ADDING CHAPTER 5.85 TO TITLE 5 OF THE ORDINANCE CODE OF THE COUNTY OF KERN FOR THE PROHIBITION OF MEDICAL MARIJUANA CULTIVATION

The following ordinance, consisting of two (2) 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 9th day of August, 2011, by the following vote, to wit:

AYES: McQuiston, Scrivner, Maggard, Watson, Goh

NOES: None

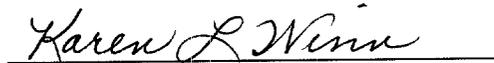
ABSENT: None



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

(SEAL)
ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors


Deputy Clerk

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

Section 1. This ordinance shall take effect and be in full force on and after the 9th day of August, 2011, and shall be published once in The Bakersfield Californian, a newspaper of general circulation, published in the County of Kern, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Ord. No. G-8190

Section 2. Chapter 5.85 of Title 5 of the Ordinance Code of the County of Kern is hereby added as follows:

**CHAPTER 5.85
MEDICAL MARIJUANA CULTIVATION**

- 5.85.010 Findings.**
- 5.85.020 Purpose and Intent.**
- 5.85.030 Relationship to other laws.**
- 5.85.040 Definitions.**
- 5.85.050 Medical Marijuana cultivation prohibited.**
- 5.85.060 Medical Marijuana cultivation declared a public nuisance.**
- 5.85.790 Penalties for violation.**
- 5.85.080 Severability.**

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.

E. This ordinance 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 ordinance 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 ordinance 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.

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.

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.

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. "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 11362.7 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. A "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.

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.

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, mature or immature, on any legal parcel of record.

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 each person or responsible party is subject to abatement under Chapter 8.44 and administrative penalties under Chapter 8.54.

5.85.070 Penalties for violation.

A. 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). Violators shall be subject to any other enforcement remedies available to the County under any applicable state or federal statute or pursuant to any 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.

5.84.080 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.

COPIES FURNISHED:
CAO; Co Counsel; DSA;
ESPS; DA; Sheriff
8/10/2011 <i>Kw</i>

ORDINANCE NO. G-8191

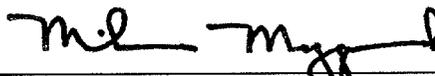
AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AMENDING CHAPTER 5.84 OF TITLE 5 OF THE ORDINANCE CODE OF THE COUNTY OF KERN FOR THE PROHIBITION OF MEDICAL MARIJUANA COLLECTIVES

The following ordinance, consisting of two (2) 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 9th day of August, 2011, by the following vote, to wit:

AYES: McQuiston, Scrivner, Maggard, Watson, Goh

NOES: None

ABSENT: None

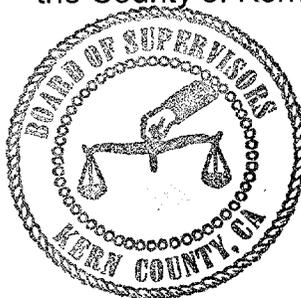


Chairman of the Board of Supervisors of the County of Kern, State of California

(SEAL)
ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors


Deputy Clerk



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

Section 1. This ordinance shall take effect and be in full force on and after the 9th day of September, 2011, and shall be published once in *The Bakersfield Californian*, a newspaper of general circulation, published in the County of Kern, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Ord. No. G-8191

Section 2. Chapter 5.84 of Title 5 of the Ordinance Code of the County of Kern is hereby amended in its entirety to read as follows:

**CHAPTER 5.84
MEDICAL MARIJUANA COLLECTIVES**

- 5.84.010 Purpose and Intent.**
- 5.84.020 Relationship to other laws.**
- 5.84.030 Definitions.**
- 5.84.040 Medical Marijuana Collectives prohibited.**
- 5.84.050 Medical Marijuana edibles prohibited.**
- 5.84.060 Medical Marijuana Collectives declared a public nuisance.**
- 5.84.070 Penalties for violation.**
- 5.84.080 Severability.**

5.84.010 Purpose and Intent.

It is the purpose and intent of this Chapter to prohibit the operation of Medical Marijuana Collectives and the sale and distribution of any edible products containing Medical Marijuana, in order to promote the health, safety, and general welfare of the citizens of the County.

5.84.020 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.

5.84.030 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. "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 11362.7 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. A "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 or 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.

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.

5.84.040 Medical Marijuana Collectives prohibited.

A. Any operation of a Medical Marijuana Collective is prohibited in the County. No permit, approval, or any other applicable license or entitlement for use shall be approved or issued for the establishment or operation of a Medical Marijuana Collective within the County.

B. This section shall not apply to those Medical Marijuana Collectives that operate other than a store-front facility or structure, mobile facility, or delivery service.

5.84.050 Medical Marijuana edibles prohibited.

The sale and distribution of any edible products containing Medical Marijuana shall be prohibited in all areas of the County.

5.84.060 Medical Marijuana Collectives declared a public nuisance.

The establishment, maintenance, or operation of a Medical Marijuana Collective, as defined in this Chapter, within the County is declared to be a public nuisance and each person or responsible party is subject to abatement under Chapter 8.44 and administrative penalties under Chapter 8.54.

5.84.070 Penalties for violation.

A. 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). Violators shall be subject to any other enforcement remedies available to the

County under any applicable state or federal statute or pursuant to any other lawful power the County may possess.

B. Each day a violation is allowed to continue and every violation of this 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.

5.84.080 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.

COPIES FURNISHED:
CAO; Co Counsel; DSA;
ESPS; DA; Sheriff
8/12/2011 <i>ku</i>