



COUNTY OF KINGS BOARD OF SUPERVISORS

GOVERNMENT CENTER HANFORD, CALIFORNIA 93230 (559) 852-2362
Catherine Venturella, Clerk of the Board of Supervisors

AGENDA ITEM February 2, 2016

Bookmark: 4

SUBMITTED BY: County Counsel – Colleen Carlson/Erik Kaeding

SUBJECT: ORDINANCE AMENDING CHAPTER 14, ARTICLE V “MEDICAL MARIJUANA” OF THE CODE OF ORDINANCES OF THE COUNTY OF KINGS

SUMMARY:

Overview:

In 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act (“MMRSA”), which states that if a county “does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana . . . , then commencing March 1, 2016, the [state] shall be the sole licensing authority for medical marijuana cultivation applicants within that . . . county.” Kings County has an existing medical marijuana cultivation ban, subject to a limited exception to criminal liability required by the Compassionate Use Act of 1996. The proposed ordinance is intended primarily to amend the language of the existing ban to clarify its scope consistent with the experience of law enforcement in implementing the ban, and to amend the terminology and findings contained in the existing ban to be consistent with the MMRSA.

Recommendation:

Waive and approve the second reading of the proposed ordinance, and adopt the ordinance.

Fiscal Impact:

None. The proposed ordinance is intended to be declarative of existing law.

BACKGROUND:

In 2015, the Legislature adopted the Medical Marijuana Regulation and Safety Act (“MMRSA”), which provides a scheme to regulate and license commercial activities relating to medical marijuana, and which phases out cooperatives and collectives. The new law explicitly maintains local land use authority over commercial marijuana or “cannabis” activities, but also provides at Health and Safety Code section

(Cont’d)

BOARD ACTION:

APPROVED AS RECOMMENDED: OTHER: _____

ROLL CALL: NEVES, PEDERSEN, VALLE, FAGUNDES, VERBOON - AYE

[Reference: See Ordinance No. 656.1, which by reference hereto, is made part of the minutes.]

I hereby certify that the above order was passed and adopted
on 2/2/2016.

CATHERINE VENTURELLA, Clerk of the Board

By Melanie Curtis Deputy.

AGENDA ITEM

ORDINANCE AMENDING CHAPTER 14, ARTICLE V "MEDICAL MARIJUANA" OF THE CODE OF ORDINANCES OF THE COUNTY OF KINGS

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11362.777, subdivision (c)(4) that if a county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana in effect by March 1, 2016, then the state shall be the sole licensing authority for cultivation within the county. Additionally, new Business and Professions Code section 19340, subdivision (a) allows deliveries into counties from licensed dispensaries unless prohibited by local ordinance.

Although Kings County has an existing marijuana ban, in the experience of law enforcement it is necessary to clarify the scope of that ban. On January 12, 2016, your Board waived and approved the first reading of an ordinance to amend chapter 14, article V of the Kings County of Ordinances, to provide the necessary clarity. The proposed ordinance also amends the County's medical marijuana ordinance to make its provisions and terminology consistent with the MMRSA. Lastly, the proposed ordinance clarifies, as is expressly allowed under the MMRSA, that marijuana is still subject to the County's employee Substance Abuse Policy despite the fluctuating legal status of the drug, and includes in the ordinance's findings a statement that cultivation of marijuana is not deemed an agricultural activity within Kings County, and that the use of local water resources for such cultivation is not a reasonable and beneficial use.

It is recommended that your Board waive and approve the second reading of the proposed ordinance and adopt the ordinance.

ORDINANCE NO. 656.1

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE V “MEDICAL MARIJUANA” OF THE CODE OF ORDINANCES OF THE COUNTY OF KINGS.

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

SECTION 1. Intent. This ordinance is declarative of existing law, and is consistent with the following federal, state, and local laws:

- (a) The federal Controlled Substances Act, 21 U.S.C. section 801, et seq., which bans marijuana in the United States, and which in particular declares at section 812(b)(1) and (c)(10) that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision.
- (b) Article X, section 2 of the state constitution, which restricts the use of the water resources of the state to reasonable and beneficial uses.
- (c) Health and Safety Code section 11362.5, subdivision (b)(2), which clarifies that the criminal immunities provided for in the Compassionate Use Act of 1996 shall not be construed to restrict laws intended to protect public health or safety or to prevent diversion of marijuana for nonmedical purposes.
- (d) Civil Code section 3479, which declares that everything is a nuisance that “is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses.”
- (e) Section 14-50 of the Kings County Ordinance Code, as adopted November 8, 2011, which bans “all medical marijuana cooperatives, collectives, or any other form of medical marijuana distribution in all zones in the county” subject to specified criminal immunities required under California law.
- (f) Section 14-36(11) of the Kings County Ordinance Code, which defines “public nuisance” to include the “[m]aintenance of property in such a condition as to be detrimental to public health, safety or general welfare or in such manner as to constitute a public nuisance as defined in Civil Code Section 3480.”
- (g) The Kings County Development Code, which contains no provision authorizing land uses or activities involving marijuana within any zone within the unincorporated area of Kings County, and which states at section 113.A.7 that: “Any use specifically prohibited either by state or federal law shall be prohibited.

Except as provided in Section 107.C of this Code, any use[s] not specifically listed in the zoning district's Table of Land Use Regulations are prohibited.”

- (h) Section 2403.C of the Development Code, which further states that: “Any structure erected, moved, altered, enlarged or maintained or any building, structure or land uses in violation of this Development Code or any regulation made under authority conferred hereby, shall be and is hereby declared to be unlawful and a public nuisance.”

SECTION 2. Purposes. This ordinance is intended for the following purposes:

- (a) To clarify the scope of the County's existing marijuana ban.
- (b) To acknowledge the adoption by the Legislature in 2015 of the Medical Marijuana Regulation and Safety Act (“MMRSA”), which establishes a scheme for statewide medical marijuana regulation and phases out cooperatives and collectives.
- (c) To make the terminology in the County's medical marijuana ordinance consistent with the MMRSA, and to reiterate the County's ban for purposes of Health and Safety Code section 11362.777, subdivision (c)(4), as enacted as part of the MMRSA.
- (d) To make other specified declarations, consistent with the County's ban on marijuana.

SECTION 3. Chapter 14, Article V of the Code of Ordinances of the County of Kings is hereby amended to read as follows (strikethrough indicates deletions and underline indicates additions):

ARTICLE V. - MEDICAL MARIJUANA

DIVISION 1. - GENERAL PROVISIONS

Sec. 14-50. - Ban.

- (a)** The County of Kings hereby prohibits all medical marijuana cooperatives, collectives, and any other form of medical marijuana distribution **or commercial cannabis activity** in all zones in the county. **This prohibition extends to, but is not limited to, the cultivation, manufacture, distribution, dispensing, delivery (including mobile delivery), testing, donation, possession, and use of marijuana, and to the transportation of marijuana to a destination within the unincorporated area of the County.**

(b) Cultivation of medical marijuana is prohibited in all zones of the county, except for cultivation of marijuana for personal medicinal use by a qualified patient or his or her primary caregiver is exempt from criminal liability under subdivision (a) of this section, provided that such cultivation occurs only within a secured, locked and fully enclosed structure on their the patient or primary caregiver's personal residence as allowed by and consistent with California Health and Safety Code Section 11362.5 et seq. Notwithstanding the provisions of California Health and Safety Code Section 11362.777, Subdivision (g), a qualified patient or primary caregiver may cultivate no more marijuana than is necessary to meet the patient's medical needs. As used herein, the term "locked and fully enclosed structure," means a structure that is locked and reasonably secure from intruders from all sides, including from the top, and that is designed in such a manner so that the contents of the structure are not visible from outside the property whereupon cultivation is occurring.

(c) Consistent with California Health and Safety Code Section 11362.5, et seq., use and possession of marijuana by a qualified patient, and possession by a primary caregiver, is exempt from criminal liability under subdivision (a) of this section if all of the following circumstances are true:

(1) The use or possession occurs only in the qualified patient's private residence or otherwise on private property with the permission of the person legally in possession thereof, provided that possession by a primary caregiver of a medically appropriate amount of marijuana solely for delivery directly to a qualified patient for personal medical use, and done in a manner that otherwise satisfies the requirements and purposes of this subdivision (c), also falls within the exception to criminal liability provided for herein.

(2) The use or possession is for personal, medical use only. The qualified patient may not engage in use that is primarily social or recreational, and may not use or possess more marijuana than is necessary to meet his or her medical needs. Neither may the qualified patient share, donate, transfer, or otherwise provide marijuana to any other person. It shall be presumed that the gathering of a qualified patient to use or possess marijuana at the same time and location as another individual who is using, possessing, or under the influence of marijuana, or who intends imminently to use, possess, or be under the influence of marijuana, is primarily for social or recreational purposes. This presumption may be rebutted by clear and convincing evidence to the contrary.

- (3) The use or possession does not threaten the health, safety, or welfare of any other individual, and in particular poses no risk of child endangerment.**
- (d) An individual purporting to be a qualified patient or primary caregiver who seeks to rely on any exception to criminal liability provided for herein shall have the burden of establishing the exception. Although no single factor shall be dispositive, relevant evidence may include the following: an explanation of the individual's activities that is credible in view of all surrounding circumstances; possession of an identification card issued pursuant to the Medical Marijuana Program, enacted at California Health and Safety Code Section 11362.7, et seq.; a copy of a doctor's recommendation; and, in the case of a primary caregiver, a written note from a qualified patient confirming the caregiver's status.**
- (e) A determination by a court of competent jurisdiction that the exceptions to criminal liability provided for in subdivisions (b) and (c) of this section are drawn too narrowly to comport with state law shall not be construed to impair the ability of the County to enforce this section in its entirety under the County's land use and nuisance abatement authority. Pursuant to California Penal Code Section 373a, failure to abate upon proper notice anything declared herein to be a nuisance is a misdemeanor.**

Sec. 14-51. - Findings and purpose.

- (a) In 1996, the voters of the State of California approved the Compassionate Use Act (CUA), which is codified in Health and Safety Code Section 11362.5.
- (b) The intent of the CUA was to ensure that seriously ill Californians who are in need of marijuana for medical purposes are not subject to criminal prosecution. The CUA further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."
- (c) In 2004, the Legislature enacted the "Medical Marijuana Program" (MMP), which is codified in Health and Safety Code Section 11362.7 et seq., to clarify the scope of the CUA, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the CUA, and enhance access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

- (d) Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with the MMP. Section 11362.83 was amended by Assembly Bill 1300 (approved by the Governor on August 31, 2011) to specifically allow cities and counties to adopt and enforce ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective, as well as the civil and criminal enforcement of such an ordinance.
- (e) The Federal Controlled Substance Act (CSA), 21 U.S.C. section 801 et seq., classifies marijuana (spelled "marihuana" in the Act) as a Schedule I drug meaning that it has a high potential for abuse, that it has no currently accepted medical use for treatment in the United States, and that it has not been accepted as safe for use under medical supervision; and therefore it is unlawful to cultivate, manufacture, distribute, dispense, or possess marijuana.
- (f) The CUA and the MMP primarily address the criminal law, providing qualified patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Courts repeatedly have upheld the power of local communities to use their land use authority to regulate or ban activities or land uses involving medical marijuana. Neither the CUA, nor the MMP, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to the MMP, provides comprehensive civil regulation of premises used for marijuana cultivation or distribution through collectives or cooperatives. The unregulated cultivation and distribution of marijuana in the unincorporated areas of Kings County can adversely affect the health, safety and well-being of the county and its residents.
- (g) In 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which amended the MMP and added provisions to the Business and Professions Code, codified at Section 19300, et seq. to: (1) require licensure for commercial cannabis activities, and (2) to phase out the use of cooperatives and collectives as a means to cultivate and distribute medical marijuana to patients. The MMRSA includes numerous protections that preserve traditional local land use authority, including protections found at California Health and Safety Code Section 11362.777, and California Business and Professions Code Sections 19315, 19316, 19320, 19322, 19330, and 19340.
- (h) Although California Health and Safety Code Section 11362.777, Subdivision (a), enacted as part of the MMRSA, declares marijuana to be an agricultural product, the language is clear that this designation is solely for purposes of that statute. Additionally, California Business and Professions Code Section 19300.5, Subdivision (s) is clear that "edible cannabis product[s]" are neither food nor medicine. The Kings County Development Code defines "agriculture" at Section

401 of the code to include only “legal practices for the cultivation and tillage of the soil.” (See also Kings County Dev. Code, §§ 107.C, F, 113.A.7 [forbidding illegal land uses]; Kings County Ord. Code, § 14-38(b) [declaring that a “lawfully established” agricultural practice is not a nuisance].) Because cultivation of marijuana is currently illegal under the CSA, marijuana is not an “agricultural product” for purposes of this Ordinance Code or the Kings County Development Code. In light of these circumstances, together with the fact that nearly all of Kings County’s groundwater basins are critically overdrafted, and locally available ground and surface water resources are needed for the production of food and fiber cultivated consistently with federal, state, and local law, the use of local water resources for the cultivation of marijuana is not a reasonable and beneficial use of those resources.

(gi) Several neighboring communities have documented through law enforcement and media reports serious, adverse impacts associated with the cultivation, distribution and use of medical marijuana including increased crime, burglaries, robberies, violence, illegal sales and use of marijuana, and other negative secondary effects such as smoking marijuana in public areas, odor complaints and adverse impacts on businesses, all of which the County of Kings could reasonably anticipate experiencing as a result of any ~~medical marijuana cultivation, collectives, or cooperatives established within the county~~ commercial cannabis activity. The issues surrounding the cultivation, distribution and use of medical marijuana are documented in the California Police Chiefs Association's Task Force on Marijuana Dispensaries "White Paper on Marijuana Dispensaries" (2009), the United States Department of Justice "The DEA Position on Marijuana" (2011), and the White House Office of National Drug Control Policy. The regulations in this article seek to protect the health, safety and welfare of the residents of Kings County while still providing reasonable accommodation for the cultivation, distribution and use of medicinal marijuana within the unincorporated territories of Kings County in accordance with state law.

(hj) Kings County has received numerous complaints from the general public regarding the cultivation, use and distribution of marijuana within the county including concerns for personal safety and inhalation of second hand marijuana smoke. Kings County, as well as nNeighboring counties of Fresno and Tulare, have each experienced homicides and home invasions related to the cultivation or dispensing of marijuana, ~~the most recent including a homicide at a marijuana cultivation site in Tulare County in October of 2011. Law enforcement and media reports from Tulare County indicate there have been at least four home invasions related to marijuana in the last year as well as four shootings related to marijuana within the last year.~~

(ik) Allowing ~~medical marijuana cooperatives, collectives and any other form of medical marijuana cultivation and/or distribution~~ commercial cannabis activities poses a threat to the public health, safety and welfare of the residents of Kings County. Adopting the regulations contained in this article are necessary and appropriate to maintain and protect the public health, safety and welfare of the residents of Kings County, and by adopting the regulations contained in this article, the board anticipates a significant reduction in the aforementioned harms threatened by the unregulated cultivation, distribution and consumption of marijuana in the unincorporated areas of Kings County.

(jl) The county recognizes the law enforcement dilemma created due to the conflict between the ~~Federal Controlled Substance Act (CSA)~~ CSA and the State CUA, ~~and MMP, and MMRSA,~~ and that federal courts have determined that, despite the CUA ~~and the MMP, and MMRSA,~~ marijuana has no accepted medical uses and therefore the federal government may enforce the CSA. (Gonzales v. Raich (2005) 545 U.S.1.) While the county in no manner intends or undertakes by adoption of this article to enforce federal law, the county is concerned about interfering with federal law enforcement efforts.

(m) Pursuant to 18 U.S.C. section 2(a), it is a federal crime to aid, abet, counsel, command, induce, or procure the commission of a violation of federal criminal law. The board of supervisors therefore finds that it is not in the public interest for the County of Kings to facilitate commercial cannabis activities in violation of federal law through a regulatory scheme that expressly permits and licenses such activities.

(kn) Nothing in this article shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this article shall be deemed a defense or immunity to any action brought against any person by the Kings County District Attorney, the California Attorney General, or the United States of America.

Sec. 14-52. - Definitions.

(a) ~~"Collective" means an association or combination of five or more primary caregivers and/or qualified patients whom have obtained valid medical marijuana identification cards from the Kings County Department of Public Health or whom have a valid physician's recommendation to use medical marijuana jointly cultivating, distributing, and/or storing marijuana for medical purposes as provided in Health and Safety Code Section 11362.775.~~

~~(b) "Cooperative" means an association or combination of primary caregivers and/or qualified patients whom have obtained valid medical marijuana identification cards from the Kings County Department of Public Health or whom have a valid physician's recommendation to use medical marijuana jointly cultivating, distributing, and/or storing marijuana for medical purposes as provided in Health and Safety Code Section 11362.775, and properly incorporated under the California Corporations Code or the California Food and Agriculture Code and operated as a non-profit.~~

(a) "Collective" and "cooperative" refer to the collective or cooperative cultivation of marijuana as described in Health and Safety Code Section 11362.775, and as referred to in Health and Safety Code Sections 11362.768 and 11362.83.

(b) "Commercial Cannabis Activity" refers to any marijuana related activity or land use, including, without limitation, the cultivation, manufacture, distribution, dispensing, sale, transfer, donation, giving, providing, sharing, delivery (including mobile delivery), testing, possession, and use of marijuana, as well as the transportation of marijuana to a destination within the unincorporated area of the County.

~~(c) "Cultivation" means planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.~~

~~(dc) "Enforcing officer" means any county code or law enforcement officer pursuing enforcement of this article including, but not limited to, the director of public health, the director of the community development agency, the sheriff, and their authorized deputies or designees.~~

~~(ed) "Marijuana," also known as "marihuana," or "cannabis," means **medical** marijuana as defined in Health and Safety Code Section 11018.~~

~~(fe) "Primary caregiver" means an individual who has consistently assumed responsibility for the housing, health or safety of a qualified patient as contemplated by the Compassionate Use Act and the Medical Marijuana Program.~~

~~(gf) "Qualified patient" means an individual who is entitled to the protections of the Compassionate Use Act and the Medical Marijuana Program.~~

(g) Except as otherwise provided for herein, definitions included in California Business and Professions Code Section 19300.5 are incorporated herein by reference. If Section 19300.5 subsequently is renumbered or amended, the definitions in the renumbered or amended statute shall apply, except that if the statute is repealed entirely, the definitions contained therein as of January 1,

2016, shall control unless reliance on any particular definition would conflict irreconcilably with current state law.

Sec. 14-53. - Separate and distinct provisions.

If any section, subdivision, sentence, clause, phrase, **term**, or **other** portion of this **chapter article** is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion of this chapter.

Sec. 14-54. - Violation.

- (a) Violation of any provision of this article is hereby declared a misdemeanor, **subject to the exceptions to criminal liability provided for in section 14-50(b) and (c) of this Ordinance Code.**
- (b) Violation of any provision of this article shall also be deemed a public nuisance and may be enforced by any remedy available to the county for abatement of public nuisances.
- (c) Each and every violation of this article shall constitute a separate violation and shall be subject to all remedies and enforcement measures enumerated in this chapter, in the Kings County Code of Ordinances and in state law. Each and every day that a violation of this chapter continues to exist shall constitute a separate and distinct violation subject to all available remedies and enforcement.
 - (1) As a nuisance per se, any violation of this chapter shall be subject to injunctive relief, revocation of the registration of occupancy for the location, disgorgement and payment to the county of any and all monies unlawfully obtained, cost of abatement, costs of investigation, attorney fees and any other relief or remedy available at law or equity. The county may also pursue any and all remedies and actions available and applicable under local and state laws for any violations **of this article committed by the collective or cooperative and persons related or associated with the collective or cooperative.**
 - (2) Each and every violation of this chapter is subject to an administrative fine of \$100.00 for the first violation, \$200.00 for the second violation within one year, and \$500.00 for every subsequent violation within one year.
- (d) All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter

shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

- (e) Nothing in this ~~chapter article~~ shall be construed as imposing on the enforcing officer or the County of Kings any duty to ~~issue a notice to abate an unlawful marijuana collective, cooperative or cultivation site, nor to abate any unlawful marijuana collective, cooperative, or cultivation site, nor to take any other action with regard to any unlawful marijuana collective, cooperative, or cultivation site, and neither the enforcing officer nor the County of Kings shall be held liable for failure to issue an order to abate any unlawful marijuana collective, cooperative, or cultivation site, nor for failure to abate any unlawful marijuana collective, cooperative, or cultivation site, nor for failure to take any other action with regard to any unlawful marijuana collective, cooperative or cultivation site~~ penalize or abate any activity forbidden by the article, and neither shall the enforcing officer nor the County of Kings be held liable for failure to carry out such enforcement activity.

Sec. 14-55. - Public nuisance, abatement, administrative fine.

- (a) Notice. Whenever an enforcing officer determines that a public nuisance exists in violation of this article on any premises within the unincorporated area of Kings County, he or she is authorized to issue a written notice of abatement and/or administrative citation ~~including~~ that includes the following information:
- (1) Identity of the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor, and identity of the occupant(s), if other than the owner(s), if known;
 - (2) Describe the location of the property sufficient to produce notice of its location (i.e. commonly used street address or the assessor's parcel number);
 - (3) State what section of this article has been violated;
 - (4) Describe the unlawful activity and the actions required to abate said activity;
 - (5) State that the owner or occupant is required to abate the public nuisance within a reasonable time which should not exceed 15 calendar days after the date that said notice was served;
 - (6) State that the owner or occupant may, within 15 calendar days after the date that said notice was served, make a request in writing to the clerk of the board of supervisors for a hearing to appeal the determination of the enforcing officer that

the conditions existing constitute a public nuisance, or other cause why those conditions should not be abated in accordance with this article;

- (7) State that, unless the owner or occupant abates the ~~unlawful marijuana collective, cooperative or cultivation site~~, **nuisance** or requests a hearing before the board of supervisors, within the time prescribed in the notice, the enforcing officer may abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll;
 - (8) The amount of the fine, if any, and a statement of how and where the fine may be paid and time period within which it must be paid; and
 - (9) The name and signature of the enforcing officer.
- (b) Service of notice. The notice and/or citation set forth in subdivision (a) shall be served personally, by mail or by posting and the date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable. Failure to receive any notice and/or citation does not affect the validity of the proceedings conducted hereunder.
- (1) Personal service. Notice and/or citation may be served by delivering it personally to the owner and/or to the occupant.
 - (2) Service by mail. Notice and/or citation may be served by mailing it by certified mail, postage prepaid with a return receipt requested, and by simultaneously mailing notice by first class United States mail. If notice and/or citation is sent by certified mail and returned unsigned then service shall be deemed effective pursuant to the first class mail, provided that the first class mail is not returned by the United States Postal Service undeliverable. Notice and/or citation shall be mailed to the occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that if the records of the county assessor show that the ownership has changed since the last equalized assessment roll was completed, the notice and/or citation shall also be mailed to the new owner at his or her address as it appears in said records.
 - (3) Posted notice. In the event that, after reasonable effort, the enforcing officer is unable to serve the notice and/or citation personally or by mail, service shall be accomplished by posting two copies of the notice and/or citation on the real property upon which the nuisance exists or by posting it on any real property

within the county in which the county has knowledge that the responsible person has a legal interest.

(c) Administrative review. Any person upon whom an abatement notice ~~a notice to abate an unlawful marijuana collective, cooperative or cultivation site~~ or an administrative citation has been served may appeal to the board of supervisors the determination of the enforcing officer that the conditions set forth in the notice constitute a public nuisance ~~to the board of supervisors~~, or may show cause before the board of supervisors why those conditions should not be abated in accordance with the provisions of this article. Any such administrative review shall be commenced by filing a written request for a hearing with the clerk of the board of supervisors within 15 calendar days after the date that said notice or citation was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcing officer contained in the notice and/or citation shall become final and conclusive on the sixteenth day following service of the notice and/or citation.

(1) Upon timely receipt of a written request for hearing which complies with the requirements of this section, the clerk of the board of supervisors shall set a hearing date not less than 15 days nor more than 60 days from the date the request for hearing was filed. The clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the notice and/or citation was served, and to the enforcing officer.

(2) Any hearing conducted pursuant to this article need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The board of supervisors has discretion to exclude evidence if it is irrelevant or if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(3) The board of supervisors may continue the administrative hearing.

(4) A quorum of board of supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the ~~notice to abate an unlawful marijuana collective, cooperative, or cultivation site~~ abatement notice and/or administrative citation. The board of supervisors shall issue a written decision in the form of a resolution, which shall include findings relating

to the existence or nonexistence of the alleged **nuisance ~~unlawful marijuana collective, cooperative or cultivation site~~**, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice and/or citation. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice and/or citation was served, and the enforcing officer.

- (5) The decision of the board of supervisors shall be final and conclusive.
- (d) Liability for costs. In any enforcement action brought pursuant to this article, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the **unlawful marijuana collective, cooperative or cultivation site, nuisance** to exist shall be liable for all costs incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this article, whether those costs are incurred prior to, during, or following enactment of this **chapter article**. In any action by the enforcing officer to abate the **nuisance ~~unlawful marijuana collective, cooperative or cultivation site~~**, under this article, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the county elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.
- (e) Enforcement. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any **thing declared herein to be a nuisance ~~unlawful marijuana collective, cooperative, or cultivation site~~** within 15 days of the date of service of the **notice to abate an unlawful marijuana collective, cooperative, or cultivation site, abatement notice or citation** unless timely appealed, or of the date of the decision of the board of supervisors requiring such abatement, the enforcing officer may take one or more of the following actions:
- (1) Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the board of supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under

this article be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or

- (2) Request that the county counsel commence a civil action to redress, enjoin, and abate the public nuisance; and/or
- (3) Continue issuing administrative fines each and every day that the **unlawful marijuana collective, cooperative, or cultivation site nuisance** remains in violation of this article.

(f) Accounting. The enforcing officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the board of supervisors showing the cost of abatement and the administrative costs for each parcel.

- (1) Notice of hearing on accounting; waiver by payment. Upon receipt of the account of the enforcing officer, the clerk of the board of supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, he or she has the right to appeal the accounting to the board by filing a written request for appeal hearing with the clerk of the board of supervisors within ten calendar days of the date of service of the accounting according to subdivision (b) above. The determination of the enforcing officer on the accounting shall be final unless a timely appeal to the board is requested. Failure to timely appeal the accounting determination of the enforcing officer is a failure to exhaust administrative remedies. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration shall be deemed a waiver of the right to appeal the accounting and an admission that said accounting is accurate and reasonable.

(2) Hearing on accounting.

- i. The board of supervisors shall meet to review the report of the enforcing officer after receiving a written request for appeal. An owner may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.
- ii. The report of the enforcing officer shall be admitted into evidence and shall be prima facie evidence of the cost reported therein. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.

- iii. The board of supervisors shall also determine whether or not the owner had actual knowledge of the ~~unlawful marijuana collective, cooperative, or cultivation,~~ nuisance or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner did not have actual knowledge of the ~~unlawful marijuana collective, cooperative, or cultivation,~~ nuisance, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such parcel or otherwise attempted to be collected from the owner of such parcel.
- iv. The board of supervisors shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.
- (g) Special assessment and lien. The board of supervisors may order that the cost of abating nuisances pursuant to this article and the administrative costs as confirmed by the board be placed upon the county tax roll by the county auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to Government Code Section 25845; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The board of supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to Government Code Section 25845.
- (h) Enforcement by civil action. As an alternative to the procedures set forth above, the county may abate the violation of this article by the prosecution of a civil action through the office of the county counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this article or requiring compliance with other terms.
- (i) Summary abatement. Notwithstanding any other provision of this article, when ~~any unlawful marijuana collective, cooperative, or cultivation site~~ anything declared in this article to be a nuisance constitutes an immediate threat to public health or safety, and when the procedures set forth above would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified, but the formal notice and hearing procedures set forth in this article shall not apply. The county may nevertheless recover its costs for abating that nuisance in the manner set forth above.

SECTION 4. In January 1996, the County of Kings adopted a Substance Abuse Policy, which states at Paragraph V.B that County employees may not “possess, use, or

be under the influence of alcohol or drugs (illegal drugs and legal drugs without a prescription) during working hours, while on standby, during meal periods or breaks, while operating County equipment, while driving a County vehicle or using a personal vehicle on County authorized business, or at anytime while on County property.” Consistent with Business and Professions Code section 19330, as enacted as part of the MMRSA, nothing in this ordinance or the Substance Abuse Policy is intended to impair the County’s ability as an employer to “maintain a drug and alcohol free workplace,” or to require the County to “accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of [marijuana] by employees and prospective employees,” or to prevent any County employee from complying with state or federal law. Like alcohol, marijuana is an intoxicating substance, and is subject to the Substance Abuse Policy irrespective of its legal status.

SECTION 5. California Environmental Quality Act. This ordinance involves only minor changes to the County’s existing medical marijuana ordinance, which is declarative of existing law and consistent with the federal ban on marijuana. These changes are intended to preserve public health and safety within Kings County, should not alter existing environmental baselines, and are not expected to have any reasonably foreseeable significant environmental impacts. Accordingly, the Board of Supervisors hereby finds that this ordinance is not subject to review under the California Environmental Quality Act pursuant to sections 15060(c)(2), 15061(b)(3), and 15308 of title 14 of the California Code of Regulations. The director of the Kings County Community Development Agency or his designee is hereby authorized and directed to file a notice of exemption with the county clerk pursuant to Public Resources Code section 21152 and section 15062 of title 14 of the California Code of Regulations.

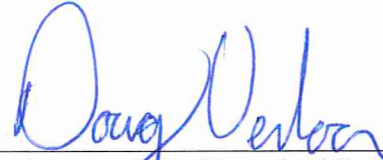
SECTION 6. Effective Date. This ordinance shall take effect and be in force thirty (30) days after its adoption. Before the expiration of fifteen (15) days after its passage, a summary of this ordinance shall be published once with the names of the members of the Board of Supervisors voting for and against the same in the Hanford Sentinel, a newspaper of general circulation published in the County of Kings.

SECTION 7. Severability. Should any part of this ordinance be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this ordinance should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

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PASSED AND ADOPTED by the Board of Supervisors of the County of Kings, State of California, on the 2nd day of February, 2016, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: Supervisors Neves, Pedersen, Valle, Fagundes, Verboon
NOES: None
ABSENT: None
ABSTAIN: None



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

WITNESS my hand and seal of said Board of Supervisors this 2nd day of February, 2016.



Deputy Clerk of said Board of Supervisors

pl/2015-10-1204/52497.doc/ ordinance



BOARD OF SUPERVISORS REQUEST TO HOLD PLACE ON AGENDA

(Follow Instructions and Complete Form)

Meeting Date: February 2, 2016 Introduced By Dept.: County Counsel

Subject as it is to Appear on ORDINANCE AMENDING CHAPTER 14, ARTICLE V "MEDICAL MARIJUANA" OF THE CODE OF ORDINANCES OF THE COUNTY OF KINGS

Agenda:

Approximate Time Required:

Consent Calendar: *Regular Ordinance*

Who will Appear Before the Board: Colleen Carlson/Erik Kaeding

Telephone No/ Ext.: 2756

Has Item been Reviewed by Administration: By County Counsel:

DOCUMENT CHECKLIST: IF THE ABOVE MATTER REQUIRES APPROVAL OF ANY DOCUMENT PLEASE INDICATE BELOW AND ENSURE THAT THE REQUIRED DOCUMENTS ARE ATTACHED TO YOUR ORIGINAL AND ALL COPIES OF YOUR AGENDA ITEM. PLEASE E-MAIL AGENDA ITEM AND ALL RELATED DOCUMENTS TO THE CLERK AND DEPUTY CLERK:

Resolution/Ordinance: Include one (1) copy with each agenda item and E-mail with Agenda Item.

Agreement: Provide sufficient number of copies of agreement to be executed -- one for each party to the agreement. Ensure that all agreements have been signed by the other party(ies). If the agreement **has not been signed** by the other party(ies) as in the case of State or Federal agreements, provide one copy for the Clerk's Pending file. **You are to forward one fully executed original agreement for Board Records as soon as available on agreements with the State or other government agency.**

Budget Transfer: Include completed and signed Budget Transfer Form with Clerk's agenda packet).

Deed [Include signed original document with Clerk's agenda packet.]

Notice of Determination [Include two (2) copies with Clerk's copy of agenda packet.]

Action Requires 4/5-Vote

Number of Minute Orders Required 1
Number of Agmts/Reso/Ord 1

Notice of Hearing [Include one copy with Clerk's copy of agenda packet AND INCLUDE PUBLICATION REQUIREMENTS & INSTRUCTIONS. E-mail with agenda item.]

Lease [Provide sufficient number of copies of Lease to be executed with original signatures of Lessee -- one for each party to the Lease.]

Other _____

RECEIVED

FEB - 4 2016

REPORT OF BOARD ACTION TO BE COMPLETED BY BOARD CLERK:

KINGS COUNTY
COUNTY COUNSEL

- Approved by Minute Order.
- Adopted Resolution # _____
- Approved Agreement # _____
- Introduced/Adopted Ordinance # 65601
- Continued to _____
- Item Pulled by _____
- Study Session/Information Only.

BY

JN/CP/RV/RP/DV Age

Must they be Certified? Yes
Must they be Certified? Yes

SPECIAL INSTRUCTIONS i.e.: RUSH (Need ASAP), Resolution on Fancy paper or to be presented to recipient at meeting, send Minutes Orders to additional departments to and any other special instructions.