

ORDINANCE NO. 677

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE V OF THE CODE OF ORDINANCES OF THE COUNTY OF KINGS.**

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

**SECTION 1. Findings and Purposes.**

- (a) In 1996, California voters adopted the Compassionate Use Act, Health and Safety Code section 11362.5 (“CUA”), which provides an exception to criminal law sanctions for seriously ill Californians who use marijuana for medical purposes.
- (b) In 2004, the Legislature enacted SB 420, Health and Safety Code section 11362.7, et seq. (also known as the Medical Marijuana Program Act, or MMP), to provide statutory guidance regarding medical marijuana use. Consistent with SB 420, in 2011, the Kings County Board of Supervisors (“Board”) adopted Ordinance No. 656, which banned all medical marijuana cooperatives, collectives, and any other form of medical marijuana distribution in all zones in the County, except for cultivation for personal medical use by a qualified patient pursuant to the CUA. Because the County’s Zoning Ordinance and later adopted Development Code did not allow for marijuana cultivation, small-scale cultivation for personal medical use remained a public nuisance in Kings County, even though it was not subject to criminal sanction.
- (c) In 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act (“MMRSA”), which provided for a comprehensive statewide scheme to regulate medical marijuana cultivation and use, and to allow for state and local licensing of businesses engaged in commercial medical marijuana enterprises. On February 2, 2016, the Board adopted Ordinance No. 656.1 to clarify the County’s ban on marijuana in light of the MMRSA. Additionally, on January 26, 2016, Ordinance No. 668-2-16 added section 113.A.8 to the County’s Development Code, incorporating the County’s ban on marijuana into the Development Code by reference.
- (d) Pending before voters on November 8, 2016, is Proposition 64, the Adult Use of Marijuana Act (“AUMA”). The purpose of the AUMA is to establish a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults age 21 and older would also be allowed to possess, use, and cultivate certain amounts of marijuana for personal use.

- (e) The Board finds that authorizing or encouraging the cultivation, possession, and use of marijuana may violate federal law, and is injurious to public health and safety. In the current drought, marijuana cultivation is not in the public interest because marijuana plants consume substantially more water than most plants used for production of food, fiber, or fuel. The experience of law enforcement in Kings County is that marijuana cultivation increases the risk of crime in our County, and the processing of marijuana poses a serious risk of fire and property damage. Since Colorado legalized marijuana under state law in 2012, homelessness there has increased by 25 percent, fires associated with marijuana in Denver have increased in incidence by over 1,000 percent, and emergency room visits associated with marijuana use have increased nearly 50 percent for residents and over 100 percent for nonresident tourists. The Board is further informed and believes that marijuana can serve as a “gateway” to the use of yet more dangerous controlled substances, including methamphetamine and heroine.
  
- (f) It is the intent of the Board in enacting this Ordinance to ban, to the maximum extent allowed under state law, the use, possession, and cultivation of marijuana, as well as all commercial activities for compensation relating to marijuana. Any ambiguity in this Ordinance and in any other ordinance previously adopted by this Board should be construed in whatever manner best effectuates this intent.

**SECTION 2.** Chapter 14, Article V of the Code of Ordinances of the County of Kings is hereby repealed and replaced as follows:

ARTICLE V. - MARIJUANA

DIVISION 1. - GENERAL PROVISIONS

**Sec. 14-50 – Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Collective* and *cooperative* refer to the collective or cooperative cultivation of marijuana, whether for nonmedical purposes or 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.

*Delivery* and *mobile delivery* refer to the delivery of marijuana to a point within the unincorporated area of Kings County from any point within or without said unincorporated area, whether or not possession of marijuana is legal at the source.

*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.

*Marijuana*, also known as *marihuana* or *cannabis*, means marijuana as defined in Health and Safety Code Section 11018.

*Marijuana business* or *commercial cannabis activity* means any activity involving cannabis undertaken for compensation of any kind or nature whatsoever, including but not limited to cultivation, processing, or sale of marijuana or a marijuana product, including a marijuana cooperative or collective, whether or not said cooperative or collective exists for medical or nonmedical purposes.

*Medical marijuana and medical marijuana use* means the use of cannabis for purposes set forth in the Compassionate Use Act and Medical Marijuana Program Act, California Health and Safety Code sections 11362.5 and 11362.7, et seq.

*Nonmedical or recreational marijuana and nonmedical or recreational use* of marijuana refer to marijuana or the use thereof not falling within the category of medical marijuana and medical marijuana use.

*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.

*Qualified patient* means an individual who is entitled to the protections of the Compassionate Use Act and the Medical Marijuana Program.

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. 14-51. - Ban.**

- (a) Except where a California county is preempted by federal or state law from enacting a prohibition on any such activity, the use, possession, cultivation, donation, giving, providing, sharing, transfer, sale, manufacture, processing, distribution, dispensing, delivery, mobile delivery, and testing of marijuana is hereby prohibited in all zones within the County of Kings. Transportation of marijuana through the unincorporated

area of the County is likewise prohibited except as otherwise provided by state or federal law. For clarity, and without limiting the generality of the foregoing or altering the definition of any term defined in this Article, the ban herein extends to commercial cannabis activities, marijuana businesses, and medical or recreational cooperatives or collectives of any kind, nature, or extent whatsoever, and includes within the definition of “marijuana” food substances and topical solutions containing marijuana.

- (b) Any violation of Subdivision (a), whether for recreational or medical purposes, is declared to be a public nuisance, and may be abated pursuant to the procedures described in Sections 14-56 and 14-57 of this Article.
- (c) Any violation of Subdivision (a), whether for recreational or medical purposes, is a misdemeanor, subject to the exceptions to criminal liability provided for in Section 14-60 of this Article.
- (d) Each day or fraction of a day that an ongoing violation of Subdivision (a) is allowed to occur shall be deemed to constitute a separate violation thereof.

**Sec. 14-52. Use and Possession.**

- (a) If the County is required under state law to allow use or possession of marijuana, to the maximum extent allowed by state law, use or possession shall remain subject to the ban stated in Section 14-51 if the use or possession is done in a manner that:
  - 1. Is expressly declared to be a crime in this state;
  - 2. Occurs in any facility or venue open to members of the public;
  - 3. Occurs on any property owned or controlled by the County of Kings, including within the public right-of-way;
  - 4. Prevents the user from adequately supervising a minor in his or her custody or care, or otherwise imminently endangers the health or safety of a child;
  - 5. Provides any individual under the age of 21 with ready access to marijuana;
  - 6. Is intended to aid, abet, support, or encourage any individual under the age of 21 in using or possessing marijuana;
  - 7. Exposes any individual under the age of 21, or any adult without his or her unequivocal consent, to second-hand marijuana smoke, or otherwise

constitutes a private nuisance to others by exposing them to noxious odors or other adverse health and safety impacts; or

8. Negligently, willfully, knowingly, or intentionally deceives or otherwise causes any individual to smoke, ingest, or otherwise use or consume marijuana without that individual's knowledge and consent.
- (b) There shall be a rebuttable presumption that a person smoking, ingesting, or consuming marijuana or marijuana products is in violation of one or more of the restrictions stated in Subdivision (a) unless such smoking, ingesting, or consumption occurs entirely in a fully enclosed area of a private residence with the knowledge and consent of the person legally in possession thereof, and in a manner that is not in plain view from outside the residence, with no one present who is under the age of 21 or otherwise who does not consent to the smoking, ingesting, or consumption; provided that, smoking, ingesting, or consuming marijuana under circumstances described herein shall not excuse anyone from otherwise complying with Subdivision (a).
  - (c) Penalties for violation of the conduct described in Subdivision (a) shall be cumulative of penalties for any other included offense(s).
  - (d) If a state law purporting to legalize use or possession of marijuana explicitly preserves local agencies' inherent land use authority, or is construed by a court of competent jurisdiction to preserve such authority, any use or possession of marijuana in the unincorporated area of Kings County shall be deemed a public nuisance, even if done in strict compliance with the requirements of this Section.

**Sec. 14-53. – Cultivation.**

- (a) To the extent that the County is required to allow the cultivation of marijuana under state law, whether for medical or recreational use, the following rules shall apply to the fullest extent allowed by state law:
  1. Personal use cultivation. The cultivation of marijuana shall be subject to limits set forth in any applicable state law. An individual who may cultivate marijuana for personal use pursuant to state law ("qualified person"), shall be allowed to cultivate marijuana only within his/her private residence or in an attached garage or other fully enclosed and locked accessory structure located entirely on property owned or legally possessed by him or her. No outdoor cultivation is allowed within the unincorporated area of Kings County.
  2. Area. In any residence, the marijuana cultivation area shall not exceed thirty-two (32) square feet measured by the canopy, nor exceed ten (10) linear feet in

- height. This limit applies regardless of the number of individuals residing in the residence. The cultivation area shall be a single designated area.
3. Lighting. Lighting for marijuana cultivation shall not exceed a total of 1,200 watts, or otherwise pose a fire or safety hazard.
  4. Building code requirements. Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building, fire, plumbing, and electrical codes, in addition to all applicable zoning codes, including lot coverage, set back, height, and parking requirements.
  5. Gas products. The use of gas products, including but not limited to carbon dioxide and butane, for marijuana cultivation or processing is prohibited.
  6. Evidence of cultivation. From outside the building wherein cultivation occurs, there shall be no exterior evidence of marijuana cultivation occurring on the site.
  7. Residence. The qualified individual shall reside in the residence wherein the marijuana cultivation occurs.
  8. Cultivation elsewhere in the County. The qualified individual shall not participate in cultivation in any other location within the unincorporated area of Kings County.
  9. Incidental use. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and shall not be used primarily for marijuana cultivation.
  10. Ventilation. The marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the residence (or property line for detached single family residences), and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include at a minimum, a system meeting the requirements of the current adopted edition of the California Building Standards Code, including Building Code section 1203.5 (Natural Ventilation) and Mechanical Code section 402.3 (Mechanical Ventilation) or the equivalent(s) thereof.
  11. Use and storage of chemicals. For the protection of local groundwater resources and indoor air quality, and to avoid disposal of harmful substances

into sewers or septic systems, no chemical shall be used for marijuana cultivation that contains any substance on the list prepared pursuant to Health and Safety Code section 25249.8; provided that any chemical specifically approved by the California Department of Pesticide Regulation for indoor use on marijuana may be used in amounts prescribed by the Department. No chemical used for marijuana cultivation shall be stored in a manner visible from neighboring residences or to individuals located outside the property line or in the public right-of-way.

12. Nuisance. The marijuana cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, traffic, vibrations, or other impacts. Nor shall marijuana cultivation be hazardous due to the use or storage of materials, processes, products, or wastes, or from any actions incidental or related to the cultivation.
13. Property owner authorization. For rental property, the lessee shall obtain written permission from the property owner or property management company to cultivate marijuana.
14. Property owner notification. If the requirement in Paragraph 13 is determined by a court of competent jurisdiction not to be an enforceable condition of cultivating marijuana, then at a minimum as a condition of registering his or her cultivation pursuant to Paragraph 15, a registrant shall be required to certify under penalty of perjury either that he or she is the legal owner of the residence wherein cultivation will occur, or that he or she has notified the property owner or management company of his or her intended registration. If the registrant is other than the current owner of the property wherein cultivation will occur, as shown on the last equalized assessment roll, the Sheriff or his or her designee is hereby authorized to mail notification of the registration to said current owner or authorized agent thereof; provided that only the fact of registration shall be disclosed in such notification, and if the registrant is a qualified patient, neither this fact nor any medical information made known to the Sheriff or designee concerning registrant shall be disclosed. Notice to the foregoing effect shall be stated in capital letters in no less than 12 point font on any registration form approved by the Sheriff pursuant to Paragraph 15. This provision for notification shall not create on the part of the Sheriff, the County of Kings, or any officer, agent, or employee thereof, a legally enforceable duty to property owners to provide such notification.
15. Registration. Before cultivating marijuana inside any residence, the proposed cultivator shall register the cultivation with the Sheriff or his or her designee, using a form approved by the Sheriff for this purpose. At the time of registration, the registrant shall be given a brochure or other handout

summarizing the requirements herein prescribed in plain English and shall, as applicable, demonstrate compliance with any provision hereof or agree in writing to comply with said provisions at all times in connection with the proposed cultivation. The failure on the part of the Sheriff or his or her designee to provide notice to a registrant of any requirement herein prescribed shall not relieve the registrant of the obligation to be familiar with and to abide by said requirement. For existing cultivation, registration shall occur within ten (10) days of date that this Section shall become operative. The Sheriff may direct the registrant to the Kings County Community Development Agency and/or Agriculture Commissioner for more information about additional requirements that may apply. Any medical information obtained by the Sheriff regarding a registrant who is a qualified patient shall be kept confidential to the extent required by law.

16. Additional requirements for garages and accessory buildings. The following additional requirements shall apply for personal use cultivation that occurs in a garage or other accessory building: the garage or other accessory building shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The garage or other accessory building shall include a burglar alarm monitored by an alarm company or private security company. The garage or other accessory building, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through an open door.
- (b) Even if the County is required to allow the cultivation of marijuana under state law, cultivation not in strict compliance with the requirements of Subdivision (a) shall be subject to the ban stated in Section 14-51, to the fullest extent allowed by state law.
  - (c) Cultivation for medical use that meets the requirements of Section 14-60 of this Article, but that is not done in strict compliance with the requirements of Subdivision (a), is declared to be a public nuisance even though not subject to criminal sanction pursuant to this Ordinance Code.
  - (d) If a state law purporting to legalize personal cultivation of marijuana explicitly preserves local land use authority or is so construed by a court of competent jurisdiction, any cultivation of marijuana in the unincorporated area of Kings County shall be deemed a public nuisance, even if done in strict compliance with this Section. (For medical marijuana, see, e.g., *Kirby v. Co. of Fresno* (2015) 242 C.A.4th 940.)
  - (e) The Sheriff shall be authorized to charge a fee for the registration described in Paragraph 15 of Subdivision (a) of this Section, which shall be approved by the Board

of Supervisors and included in the County's fee schedule. The amount of the fee shall not exceed a reasonable estimate of the actual direct and indirect cost per registrant to the Sheriff of administering the registration requirement.

### **Sec. 14-54 – Deliveries**

(a) If a court of competent jurisdiction construes any state law to prohibit the County from banning mobile deliveries of medical or nonmedical marijuana from a licensed premise outside the unincorporated area of Kings County to a location within the unincorporated area of the County, then the following restrictions on deliveries shall apply to the fullest extent allowed under state law:

1. The order for the delivery shall have been placed at the premises of the licensed facility outside of the unincorporated area of Kings County from which the delivery shall originate.
2. No delivery shall occur within 600 feet of an area where minors congregate, such as a school, park, youth center, or day care facility. This distance shall be the horizontal distance measured in a straight line from the property line of the school or other facility to the closest property line of the lot on which the delivery occurs.
3. The vehicle from which the delivery is being made shall not in any manner advertise that it is carrying marijuana.
4. Not more than 28.5 grams of marijuana may be delivered to any single person, or 8 grams if concentrated.
5. The marijuana will remain in an opaque, fully enclosed, and locked container until the time of its delivery to the purchaser, which shall occur indoors on private property out of view of the general public, and without children present at the time.
6. The marijuana shall be physically handed to the purchaser thereof, and no delivery shall be completed if the purchaser is not present to receive the marijuana personally. The identity and age of the person receiving the marijuana shall be verified by the person completing the delivery, who shall

require the purchaser to show a valid government issued identification card bearing a photograph and birth date.

- (b) Even if the County is required to allow mobile deliveries under state law, deliveries not in strict compliance with the requirements of Subdivision (a) shall be subject to the ban stated in Section 14-51, to the fullest extent allowed by state law.
- (c) If a state law purporting to legalize delivery of marijuana explicitly preserves local land use authority or is construed by a court of competent jurisdiction to preserve the same, any delivery of marijuana in the unincorporated area of Kings County shall be deemed a public nuisance, even if done in strict compliance with this Section.

**Sec. 14-55 – Penalty.**

Any person committing any act declared by this Division to be a misdemeanor shall be subject to a maximum penalty of one (1) year imprisonment in the County jail, a fine of one thousand dollars (\$1,000), or both, cumulative of any other criminal, civil, or administrative penalties or enforcement remedies prescribed by law, including any administrative penalties or nuisance enforcement actions as may be provided for herein in this Article. Notwithstanding the foregoing, no fine or penalty imposed pursuant to this Article shall exceed the maximum fine or penalty provided for under any state law for the same conduct, act, omission, occurrence, or circumstance for which the fine or penalty is being imposed.

**Sec. 14-56 – Administrative Penalties and Nuisance Abatement.**

- (a) Violation of any provision of this Article shall be deemed a public nuisance and may be enforced by any remedy available to the County for abatement of public nuisances.
- (b) 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 Article, in the Kings County Code of Ordinances, and in state law. Each and every day that a violation of this article 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 Article 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.

2. Each and every violation of this Article 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; provided that no fine imposed pursuant to this Section shall exceed any maximum fine or penalty provided for under any state law for the same conduct, act, omission, occurrence, or circumstance for which the fine is being imposed.
- (c) 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 article shall be deemed to authorize or permit any activity that violates any provision of state or federal law.
- (d) Nothing in this Article shall be construed as imposing on the enforcing officer or the County of Kings any duty to 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. 14-57. – Same – Abatement Procedures.**

- (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 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 (e.g., 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 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 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, 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 16th 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 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, 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 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 Article. In any action by the enforcing officer to abate the nuisance 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 attorney's 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 attorney's 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 anything declared herein to be a nuisance within 15 days of the date of service of the 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 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.*

- a. 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.
- b. 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.
- c. The board of supervisors shall also determine whether or not the owner had actual knowledge of the 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 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.

d. 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 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.

#### **Sec. 14-58. – Severability.**

If any section, subdivision, sentence, clause, phrase, term, or other portion of this 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 Article.

## DIVISION 2. – MEDICAL MARIJUANA

### **Sec. 14-60. – Exception to Criminal Liability for Medical Marijuana.**

- (a) This Section contains exceptions to criminal liability for violations of this Article. The restrictions contained herein apply to the maximum extent allowed under state law. Nothing contained herein shall be deemed to permit anything otherwise declared by this Article to be a nuisance, so that cultivation, use, or possession of marijuana may still constitute a nuisance within the unincorporated area of Kings County, even if done in conformance with this Section.
- (b) Cultivation of marijuana for personal medicinal use by a qualified patient or his or her primary caregiver is exempt from criminal liability under Section 14-51, provided that such cultivation occurs only within a secured, locked and fully enclosed structure on 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), although the cultivation area should not exceed 100 square feet, a qualified patient or primary caregiver may cultivate no more marijuana than is necessary to meet the patient's medical needs, so that a smaller area restriction may apply. There shall be a rebuttable presumption that a patient requires less than 6 mature or 12 immature marijuana plants for medical purposes, pursuant to Health and Safety Code section 11362.77, subdivision (a). For reference purposes only, it is noted that a single marijuana plant can produce up to one pound of marijuana, which is enough to produce approximately 800 marijuana cigarettes, and a single dose of marijuana can affect cognitive functioning for as long as three hours or more, so that 6 plants can produce enough marijuana to keep an individually continuously intoxicated during waking hours for up to three years. 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 Section 14-51 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, 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. 14-61. - 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. § 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.
- (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 Development Code, sections 107.C, F, 113.A.7 [forbidding illegal land uses]; Kings County Ordinance Code, section 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.

- (i) 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 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 Division 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.
- (j) 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 neighboring counties of Fresno and Tulare, have each experienced homicides and home invasions related to the cultivation or dispensing of marijuana.
- (k) Allowing 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 Division 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 Division, 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.

- (l) The county recognizes the law enforcement dilemma created due to the conflict between the CSA and the state CUA, MMP, and MMRSA, and that federal courts have determined that, despite the CUA, 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 Division to enforce federal law, the county is concerned about interfering with federal law enforcement efforts.
- (m) Pursuant to 18 U.S.C. § 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.
- (n) Nothing in this Division 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 Division 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.

**SECTION 3.** 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.” 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 4. California Environmental Quality Act.** This ordinance makes no changes to the County’s existing ordinances or policies, except for changes otherwise required by state law. To the extent that the ordinance makes changes to existing law that could be deemed discretionary, those 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 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. County Counsel 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 5. 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 voting for and against the same in the *Hanford Sentinel*, a newspaper of general circulation published in the County of Kings.

**SECTION 6. 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.

PASSED AND ADOPTED by the Board of Supervisors of the County of Kings, State of California, on the 4th day of October, 2016, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

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

/s/ Doug Verboon  
Chairman of the Board of Supervisors  
County of Kings, State of California

WITNESS my hand and seal of said Board of Supervisors this 4th day of October, 2016.

/s/ Melanie Curtis  
Deputy Clerk of said Board of Supervisors