

ORDINANCE NO. G-____

AN INTERIM ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AMENDING CHAPTER 5.86 OF TITLE 5 OF THE ORDINANCE CODE EXTENDING A MORATORIUM ON THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE URGENCY THEREOF

The following Ordinance, consisting of two (2) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern at a regular meeting of the Board of Supervisors held on the 4th day of April, 2017, by the following vote,:

AYES:
NOES:
ABSENT:

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

(SEAL)
ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

Deputy Clerk

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

Section 1. This ordinance shall be published in accordance with Government Code section 25124, and it shall take effect and be in full force on and after the 4th day of April, 2017.

Section 2. Chapter 5.86 of Title 5 of the Kern County Ordinance Code is amended in its entirety to read as follows:

Chapter 5.86

MORATORIUM ON ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSARIES

Sections:

5.86.010	Publication and Effective Date.
5.86.020	Declaration of Urgency.
5.86.030	Moratorium Imposed.
5.86.040	Extension of Moratorium.
5.86.050	Violation - Penalty - Enforcement.
5.86.060	Retroactive Effect

5.86.010 Publication and Effective Date.

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

5.86.020 Declaration of Urgency.

1. In 1996, the voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996").

2. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited specified circumstances.

3. On January 1, 2004, SB 420 (Chapter 875 of the Statutes of 2003) became effective and was intended to clarify the scope of the Compassionate Use Act of 1996 and to allow cities, counties, and other local governing bodies to adopt and enforce rules and regulations consistent with SB 420.

4. On March 31, 2009, the Board of Supervisors repealed existing local regulations regarding medical marijuana dispensaries and put in their place Ordinance G-7849, which amended Chapter 5.84 of Title 5 of the Kern County Ordinance Code to provide for limited regulation of the location of medical marijuana dispensaries. The new ordinance contained no regulations addressing the criminal and nuisance activity that has been associated with marijuana dispensaries.

5. In 2010, the Board of Supervisors passed urgency Ordinance G-8079 imposing a moratorium on the establishment of new medical marijuana dispensaries and prohibited existing dispensaries from relocating within Kern County. The moratorium was extended twice, the last time by Ordinance G-8177.

6 In 2011, the Board of Supervisors proposed and then adopted Ordinance G-8191 banning all medical marijuana dispensaries. Ordinance G-8191 was challenged by

a referendum protest petition. In response to the referendum protest, in 2012, the Board of Supervisors voted to place on the June 5, 2012 ballot a measure designed to regulate medical marijuana dispensaries under Kern County's zoning ordinance. The ballot measure was designated on the ballot as Measure G. The Board of Supervisors also acted to repeal, in its entirety, Chapter 5.84 of Title 5 of the Kern County Ordinance Code.

7. Measure G passed with approximately 69% of the vote, but was invalidated in 2014 by the Kern County Superior Court for non-compliance with the California Environmental Quality Act. The Fifth District Court of Appeal upheld that ruling in April of 2016.

8. In 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729 that local government agencies have authority to ban and otherwise regulate medical marijuana activities under the local agencies' police powers.

9. In 2015, the State of California adopted the Medical Marijuana Regulation and Safety Act which regulates the commercial medical marijuana industry through a licensing and permit process. The legislation expressly recognizes the power of local jurisdictions to regulate medical marijuana activities under the local jurisdictions' police powers. Regulations implementing the Medical Marijuana Regulation and Safety Act have yet to be issued by the State.

10. On April 5, 2016, the Fifth District Court of Appeal ruled in the case of *County of Kern v. T.C.E.F., Inc.* that the Kern County Board of Supervisors acted in violation of Elections Code 9145 when it repealed Chapter 5.84 of Title 5 of the Kern County Ordinance Code in 2012, thus reinstating into law an ordinance chapter and regulatory scheme that was repealed.

11. The California Supreme Court declined to grant review of the Fifth District Court of Appeal decision in *County of Kern v. T.C.E.F., Inc.* and Ordinance G-7849 was reinstated.

12. Only four of the current dispensaries operating in the unincorporated areas of Kern County came into existence while Ordinance G-7849 was in effect, and two of them were found by a court of law not to have been operating legally under Ordinance G-7849.

13. Since 2009, both the California Supreme Court and the California Legislature have recognized the power of local governments to ban and otherwise regulate medical marijuana.

14. The ruling of the Fifth District Court of Appeal in *County of Kern v. T.C.E.F., Inc.* has created uncertainty as to how and under what circumstances the County may regulate current dispensaries and any future dispensaries and how such local regulation will interact with the new state legislation and its implementing regulations. In addition, it has created uncertainty as to the legal status of almost all dispensaries currently operating in the unincorporated areas of Kern County.

15. The ruling of the Fifth District Court of Appeal has also created a condition in which individuals may believe there is no longer any legal bar to operating a medical marijuana dispensary in Kern County and will be encouraged to open additional medical marijuana dispensaries, thus magnifying the adverse health, safety, and welfare impacts articulated below.

16. Since 2014, Kern County has seen a proliferation of new medical marijuana dispensaries even though such a property use is not permitted under the County's zoning ordinance, and operators are in violation of local law. The proliferation of new marijuana dispensaries has led to increased enforcement efforts, which have resulted in a multiplicity of court proceedings with the attendant expenditure of public resources. Since the establishment of the moratorium on May 10, 2016, approximately 19 new dispensaries have attempted to open in violation of the moratorium.

17. A September, 2015, federally-commissioned study prepared by the Rocky Mountain High Intensity Drug Trafficking Area regarding the impact of marijuana legalization in Colorado concluded, among other things, that marijuana-related traffic deaths increased 92 percent in Colorado between 2010-2014, marijuana use among youth ages 12 to 17 had increased, marijuana-related hospitalizations increased by 46% over a three-year period, and marijuana ingestions by children under 12 increased from 2 in 2009 to 16 in 2014.

18. Data from other jurisdictions, such as Colorado, where recreational use of marijuana has been legalized suggests that the proliferation of marijuana dispensaries can lead to an increase in criminal activity. For example, in 2009, the Denver Police Department estimated that approximately 17% of marijuana retail shops had been robbed or burglarized in the preceding 12 months. By 2014, NBC News reported that the annual robbery and burglary rate had increased to 50%. A 2013 report on the Colorado marijuana industry revealed that nearly one-third of the crimes committed in Denver occur within 1,000 feet of a medical marijuana dispensary.

19. These reports are consistent with the findings of the California Police Chiefs Association's Task Force on Marijuana Dispensaries issued in 2009 which include an increased risk of burglary, drug dealing, sales of marijuana to minors, loitering, heavy vehicle and foot traffic, increased noise, and robberies of customers.

20. The Kern County Code Compliance Division reports that some business owners located adjacent to or in the vicinity of a medical marijuana dispensary complain of heavy foot traffic and noise emanating from the dispensary. Business owners have also attributed loss of business to the proximity of their business to a dispensary, citing customer complaints and fears about the dispensary.

21. The Kern County Sheriff's Office reports that according to its analyses of crime data for the period of April 1, 2015, through March 31, 2016, an average of 61 reports of criminal activity occurred within 660 feet (1/8 of a mile) of medical marijuana dispensaries. The highest concentration of crimes reported within 660 feet of any one dispensary was 176 and the lowest was 6. For the same time period, the Sheriff's Office

reports that marijuana dispensaries averaged 4 calls for service. The highest call volume was 27 and the lowest was 0. For the higher call volume dispensaries, the most commonly reported crime was burglary.

22. A 2016 study of the traffic impacts of marijuana dispensaries in Colorado concluded that marijuana dispensaries generate ten times more traffic than a typical retail store and five times more traffic than a pharmacy. The traffic impacts on medical marijuana dispensaries in Kern County have not been studied. The air quality throughout most of Kern County is poor as Kern County is in extreme non-attainment for criteria pollutants with the detrimental health impacts that result from the presence of such pollutants. The traffic impacts of dispensaries need to be studied locally in order to develop an appropriate legislative response to the proliferation of medical marijuana dispensaries.

23. In November, 2016, the California electorate voted to legalize the commercial sale, distribution, manufacture and cultivation and personal use of recreational marijuana and marijuana products. This new regulatory scheme known as the Adult Use of Marijuana Act (Proposition 64) provides for regulation at the local level which will dictate whether a state license to sell, distribute, manufacture or cultivate recreational marijuana may be issued beginning in January, 2018. Without a state license, no one may legally sell, distribute, manufacture or cultivate recreational marijuana on a commercial level in the State of California. Dispensaries currently operating legally in Kern County may be required to shut down through an amortization program, depending upon the type of regulatory program adopted by the County of Kern. Therefore, a moratorium is needed to maintain the status quo so that more individuals do not make the investment in a dispensary only to lose that investment under a changed regulatory landscape.

24. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries and the impact on local enforcement efforts on October 5, 2015, the Board of Supervisors requested County staff to study the imposition of a ban on medical marijuana dispensaries, deliveries of medical marijuana, and cultivation of medical marijuana. Since that time, the evaluation has been ongoing. However, in light of recent legal developments, staff is also exploring alternatives to a ban, including any land use regulations that may need to be included in Kern County's zoning ordinance, related to the issues associated with marijuana dispensaries and the potential impact such facilities may have on the public health, safety, and welfare of the citizens of Kern County. In February, 2017, County held its first scoping meeting on the Environmental Impact Report (EIR) that is undergoing preparation to evaluate the impacts on the environment of the various alternatives open to the County relative to regulation of commercial and medical marijuana. The stated goal of this effort is to have proposed regulatory options ready for consideration by the Board of Supervisors in Fall of 2017. County must have its regulatory system in place by no later than December of 2017 in anticipation of the State of California's intent to begin issuing licenses in January, 2018 to cultivate, distribute, manufacture and sell recreational marijuana and medical marijuana.

25. The Board of Supervisors has the requisite authority pursuant to Government Code section 65858 to adopt an interim urgency ordinance prohibiting uses inconsistent

with regulations contemplated by this Board to be adopted after completion of a study. The moratorium established by this urgency ordinance is intended to address not only the ongoing secondary impacts of criminal and nuisance activities caused by medical marijuana dispensaries, but also degradation of air quality, child safety and traffic safety issues raised by the proliferation of marijuana and marijuana-related businesses as highlighted in the referenced studies as well as the impending state-wide legalization of commercial cannabis cultivation, manufacture and sales as noted above. This set of circumstances is new and did not exist in 2010 when the first moratorium was passed.

26. The adoption of a moratorium on new medical marijuana dispensaries is not preempted by the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, or the Adult Use of Marijuana Act and is within the scope of authority conferred on Kern County by Government Code section 65858(a).

27. The sale, use, possession, and distribution of marijuana remains illegal under the federal Controlled Substances Act. There is currently a conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries.

28. Based on the foregoing, the Board of Supervisors finds that allowing any new medical marijuana dispensaries to locate within the unincorporated areas of Kern County or allowing any existing dispensaries to relocate within the unincorporated areas of Kern County, pending Kern County's study of the potential impact of such facilities, poses a current and immediate threat to the public's health, safety, and welfare.

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

5.86.030 Moratorium Imposed.

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

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

For purposes of this ordinance, "Medical Marijuana Dispensary" means any facility or location where medical marijuana is made available to and/or distributed by a person to any of the following: a primary caregiver, a qualified patient, or a person with a medical

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

5.86.040 Extension of Moratorium.

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

5.86.050 Violation - Penalty - Enforcement.

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

5.86.060 Retroactive Effect

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

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