

Chapter 5.85 - MEDICAL MARIJUANA CULTIVATION^[3]

Sections:

Footnotes:

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Editor's note—Ord. No. G-8556, § 2, adopted May 19, 2015, amended Ch. 5.85 in its entirety, in effect repealing and reenacting said chapter to read as set out herein. The former Ch. 5.85, §§ 5.85.010—5.85.080, pertained to similar subject matter and derived from Ord. No. G-8190, § 2, adopted Aug. 9, 2011.

5.85.010 - Findings.

The board of supervisors of the County of Kern finds and declares as follows:

- A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").
- B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.
- C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.
- D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that the Compassionate Use Act and the Medical Marijuana Program Act neither expressly nor impliedly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land.
- E. This chapter is enacted, consistent with Health and Safety Code Section 11362.7 et seq., to protect the public health, safety, and welfare of Kern County residents in relation to the legal operation and location of medical marijuana collectives.
- F. According to the Kern County Sheriff, medical marijuana collectives have been operating in Kern County for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Some of the individuals arrested would be disqualified from operating a dispensary based on reasonable standards relating to their criminal history backgrounds. Other public entities have documented violence related to operation of medical marijuana collectives. Medical marijuana collectives attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Medical marijuana collectives are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance.

- G. We concur with the Kern County Sheriff, that medical marijuana cultivation in Kern County poses an urgent and immediate threat to the public peace, health, and safety. Several medical marijuana grows have recently emerged in Kern County which are very visible to the public, and easily accessible by the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. During the current harvest and processing season there is an immediate threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows.
- H. Medical marijuana grows create a nuisance and threaten the safety and property of nearby land owners and their families. If medical marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.
- I. Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.
- J. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.
- K. Kern County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing access to medical marijuana for ill residents.
- L. Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the act except as mandated by state law.
- M. Nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law.
- N. Kern County's unique geographic conditions, which cover approximately eight thousand two hundred (8,200) square miles and include dense forested areas, mountainous areas and large sparsely populated areas, provide conditions favorable to illicit marijuana cultivation.
- O. Enforcement of the medical marijuana cultivation ordinance poses unique challenges due to the seasonal nature of the cultivation process, the financial incentive to violate the ordinance in order to sell marijuana illegally, the potential financial rewards from illegal cultivation that increase as the magnitude of the violation increases and the number of parties often involved in cultivation efforts that violate this chapter. Because of those challenges, the existing administrative penalty ordinance, Chapter 8.54, is not well-suited to formulate a penalty proportional to the misconduct involved in violating the cultivation ordinance and is inadequate to deter violations. Therefore, a separate administrative penalty section unique to the medical marijuana cultivation ordinance is necessary.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.020 - Purpose and intent.

It is the purpose and intent of this Chapter pursuant to Government Code Section 25123(d) to immediately prohibit the large-scale cultivation of medical marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens of Kern County.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.030 - Relationship to other laws.

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the board that this chapter shall be interpreted to be compatible and consistent with federal, county, and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this Code found to be in conflict.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.040 - Definitions.

For purposes of this chapter, these words and phrases shall be defined as follows:

- A. "County" means the County of Kern or the unincorporated area of the county of Kern as required by the context.
- B. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one (1) or more marijuana plants or any part thereof in any location.
- C. "Day" means calendar day.
- D. "Enforcing officer" means any public official charged with the responsibility of enforcing this chapter.
- E. "Immediate threat to public health and safety" includes the cultivation of marijuana (1) in any building or other structure that does not comply with the County's building code and poses an immediate risk of physical harm to its occupants; (2) in any location that is not secured against unauthorized entry; (3) in any location that is accessible by any person under the age of eighteen (18); or (4) in any location where booby-trap devices are used.
- F. "Marijuana" and "marijuana plant" shall have the same definition as "marijuana" in California Health and Safety Code Section 11018 as it now reads or as amended and shall include any clone and any mature or immature marijuana plant.
- G. "Medical marijuana" means marijuana or marijuana plant used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq.
- H. "Medical marijuana collective" or "dispensary" means any operation, including a store-front facility or structure, mobile facility, or delivery service, wherein medical marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to primary caregivers, and qualified patients, as defined by this chapter.

A "medical marijuana collective" or "dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a

home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.7 et seq.

- I. "Primary caregiver" shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.
- J. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.
- K. "Responsible party" means any individual, association, partnership, joint venture, government entity, industry, corporation, medical marijuana collective, marijuana cooperative, or any other entity engaged in the cultivation of medical marijuana in violation of this chapter, any individual or entity owning the real property on which the cultivation takes place and any individual or entity leasing or possessing the real property on which the cultivation takes place.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.050 - Medical marijuana cultivation prohibited.

- A. Outdoor cultivation of medical marijuana is prohibited in all areas of the county. Indoor cultivation of medical marijuana is prohibited in all areas of the county.
- B. This section shall not apply to cultivation of twelve (12) or fewer medical marijuana plants on any legal parcel of record.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.060 - Prohibited medical marijuana cultivation declared a public nuisance.

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this chapter, within the county is declared to be a public nuisance and is subject to abatement under Chapter 8.44; and each responsible party is subject to administrative penalties under Section 5.85.075.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.070 - Criminal penalties for violation.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail, or a fine of one thousand dollars (\$1,000.00). Violators shall be subject to any other enforcement remedies 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.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.075 - Administrative civil penalties for violation of medical marijuana cultivation limit.

- A. Each day that more than twelve (12) medical marijuana plants are being cultivated on any legal parcel of record shall constitute a separate and distinct violation and shall be subject to all remedies provided in Section 5.85.075. Each medical marijuana plant grown in excess of twelve (12) on any legal parcel of record shall constitute, in and of itself, a separate and distinct violation of this chapter and shall be subject to all remedies provided in this section.

- B. In determining the amount of any administrative penalty, the enforcing officer shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any harm caused by the violation or violations, any prior history of violations, the degree of culpability, the responsible parties' ability to pay the penalty, the market value of the marijuana plants being cultivated in violation of this chapter, the assessed value of the land on which the violation or violations occurred and any other factors in furtherance of justice. The imposition of administrative penalties is not an exclusive remedy, but is in addition to all other civil and criminal remedies available to the county to remedy violations of this chapter.
- C. Administrative penalties for violation of this chapter shall be assessed as follows:
1. A penalty up to one thousand dollars (\$1,000.00) for violation of this Chapter at the time a notice of violation is served on the responsible party or parties and either:
 2. a. A penalty up to one thousand dollars (\$1,000.00) per day for each day a violation remains unabated past the deadline set forth in the notice of violation; or
 - b. For every plant being cultivated over the twelve-plant limit established by this chapter, a per plant penalty to be administered according to the following schedule for each day a violation remains unabated past the deadline set forth in the notice of violation:

Number of Plants Under Cultivation in Excess of 12	Per Plant Per Day Penalty
1—10	Up to \$25.00
11—20	Up to \$50.00
21—30	Up to \$75.00
31—40	Up to \$100.00
41—50	Up to \$150.00
51 or more	Up to \$300.00

D. The enforcing officer shall begin the administrative process by issuance of a notice of violation.

If the violation does not create an immediate threat to health or safety, the enforcing officer shall provide for a reasonable period of time, not to exceed five (5) days from the date the notice of violation is served, for the responsible party or parties to abate the cultivation of all marijuana plants being cultivated in excess of twelve (12). If within the time period stated in the notice of violation the responsible party or parties completely remedy the violation, then the enforcing officer will take no further enforcement action relative to the excess cultivation violation other than collection of the administrative penalty imposed pursuant to subsection C.1.

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

- E. The notice of violation shall be issued on a form containing:
1. The name and address of the responsible party or parties;
 2. The address of the real property where the violation occurred;
 3. A statement of the acts, events or conditions which resulted in violation of this chapter, including a reference to this chapter and the date(s) of occurrence;
 4. The amount of the administrative penalty to be imposed pursuant to subsection C.1.;
 5. The number of days the responsible party or parties have to abate the violation or be subject to the imposition of additional administrative penalties pursuant to subsection C.2.;
 6. Identification of appeal rights, including the time the notice of violation may be appealed to the board of supervisors;
 7. Notification that appeal to the board of supervisors does not toll the daily accrual of administrative penalties; and
 8. The signature of the public official issuing the notice of violation and the date the notice was issued.

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

- F. Following expiration of the time period for abatement stated in the notice of violation, if all plants being cultivated in excess of twelve (12) have not been abated, then the enforcing officer may issue a notice of violation and imposition of daily administrative penalty, which shall be issued on a form containing:
1. The name and address of the responsible party or parties;
 2. The address of the real property where the violation occurred;
 3. A statement of the acts, events or conditions which resulted in violation of this chapter, including a reference to this chapter and the date(s) of occurrence;
 4. That the time period allowed for abatement has lapsed and the violation has not been abated;
 5. The amount of the daily administrative penalty to be imposed, the reasons for it and that the penalty will be imposed each day the violation remains unabated;
 6. Identification of appeal rights, including the time within which the notice of violation and imposition of daily administrative penalty may be appealed to the board of supervisors;
 7. Notification that appeal to the board of supervisors does not toll the daily accrual of administrative penalties; and
 8. The signature of the public official issuing the notice of violation and the date the notice was issued.
- G. The notice of violation and the notice of violation and imposition of daily administrative penalty may be combined with a notice and order to abate issued pursuant to Chapter 8.44.
- H. All notices provided for in this chapter shall be served by first class mail, postage prepaid, as follows:
1. On the responsible party or parties at the address of the real property where the violation occurred;
 2. On the real property owner(s) at any address appearing on the last equalized County assessment roll; and
 3. The last known address of any responsible party if other than the real property where the violation occurred.

Service made as provided in this chapter shall be effective on the date of mailing.

- I. In lieu of personally serving any of the notices as provided in subsection H., service of the notices may be made as follows:
1. By leaving a copy during usual business hours with the person apparently in charge of the responsible party's place of business and thereafter mailing by first class mail, postage prepaid, a copy to the responsible party at the address where the copy was left; or
 2. By leaving a copy at the responsible party's dwelling or usual place of abode and thereafter mailing by first class mail, postage prepaid, a copy to the responsible party at the address where the copy was left; or
 3. If the responsible party has a property manager or rental agent overseeing the premises, service may be effected as provided in subsection I.1. or I.2. on the manager or rental agent; or
 4. If a responsible party or parties cannot be located or served as provided in subsection I.1., I.2., or I.3., then by posting the property with the Notice and mailing a copy of the notice by first class mail, postage prepaid, to the address of the real property where the violation occurred or is occurring.
- J. The failure of any responsible party or other person to receive any notice required to be given or posted pursuant to this chapter shall not affect in any manner the validity of any proceedings taken pursuant to this chapter.
- K. The notice of violation and the notice of violation and imposition of daily administrative penalty shall inform the recipients of their right to request a hearing before the board of supervisors in accordance with this chapter. If such a hearing is not requested within ten (10) days after issuance of the notice, the proposed penalty shall become final and conclusive, and the person or persons to whom the notice was issued shall immediately make payment of the penalty amount to the county.

Filing an appeal shall not toll the daily accrual of administrative penalties.

A hearing shall be requested by completion of a request for hearing form and returning it to the address stated on the form within ten (10) days after issuance of the notice.

- L. If any recipient of a notice of violation or the notice of violation and imposition of daily administrative penalty requests a hearing before the board of supervisors, the person shall be notified by first class mail, postage prepaid, when the matter is set for hearing. Whenever possible, the hearing shall be set within fifteen (15) days after the request is made.

If the violation has been abated, the hearing notification shall state the final amount of the penalty to be imposed. If the violation has not been abated, the notification shall state the amount of the penalty as of the time of the notification and the estimated amount the penalty will be as of the time of the board hearing if the violation remains unabated.

After the hearing, the board may impose, modify, or disapprove, in whole or in part, by its own order, the penalty set forth in the notice. The decision of the board shall be final and conclusive. Any order of the board shall become effective upon issuance and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in the board's order shall be made to the county within twenty (20) days of service of the order, unless timely appealed to the Superior Court.

- M. Interest shall accrue on all amounts due under this section at the legal rate, from the effective date of the administrative penalty order to the date payment is made pursuant to the laws applicable to civil money judgments.

In addition to any other legal remedy, whenever the full amount of the administrative penalty has not been fully satisfied within thirty (30) days after the penalty becomes final, the amount owed may be declared a lien on real property owned by the responsible party or parties pursuant to Section 8.54.130 and may also be declared a special assessment against real property owned by the responsible party or parties pursuant to Section 8.54.130. In addition, the county may withhold issuance of licenses, permits and other entitlements for any property owned, possessed or leased by the responsible party whenever an administrative penalty resulting from a violation of this chapter remains unpaid.

- N. Administrative penalties imposed pursuant to this chapter shall also constitute a personal obligation of each responsible party. In the event that administrative penalties are imposed on two (2) or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the county may prosecute a civil action to collect any administrative penalty imposed pursuant to this chapter.
- O. The payment of administrative penalties does not bar the county from taking any other enforcement action regarding a violation that is not corrected within the time period stated in the notice of violation. This chapter does not supersede Kern County Ordinance Code Chapter 8.54.

(Ord. No. G-8556, § 2, 5-19-15)

5.85.080 - Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

(Ord. No. G-8556, § 2, 5-19-15)