

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF KERN, STATE OF CALIFORNIA**

In the matter of:

Resolution No. 2017-320

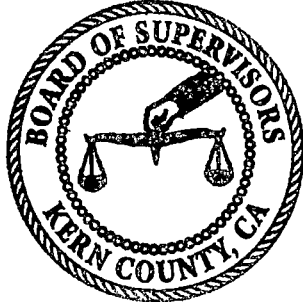
**KERN COUNTY CANNABIS LAND USE ORDINANCE
(COMMERCIAL CANNABIS BAN)**

I, KATHLEEN KRAUSE, Clerk of the Board of Supervisors of the County of Kern, do certify that the following resolution, on motion of Supervisor Gleason, seconded by Supervisor Couch, was duly passed and adopted by the Board of Supervisors at an official meeting this 24th day of October, 2017, by the following vote:

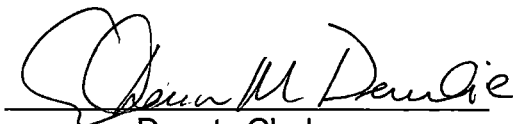
AYES: Gleason, Scrivner, Maggard, Couch

NOES: Perez

ABSENT: None



KATHLEEN KRAUSE
Clerk of the Board of Supervisors
County of Kern, State of California


Deputy Clerk

RESOLUTION

Section 1. WHEREAS:

(a) 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"). The intent of Proposition 215 was to enable persons who are in need of medical cannabis for specified medical purposes to obtain and use it under limited specified circumstances.

(b) 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.

(c) 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 cannabis activities under the local agencies' police powers.

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

(e) Since 2009, both the California Supreme Court and the California Legislature have recognized the power of local governments to ban and otherwise regulate medical cannabis.

(f) In 2016, the voters of the State of California approved Proposition 64 (codified in various amendments of the Business and Professions Code, Food and Agriculture Code, Health and Safety Code, Fish and Wildlife Code, Revenue and Taxation Code, and the Water Code) entitled "The Adult Use of Marijuana Act" ["AUMA"]), which legalized the recreational use of cannabis for persons aged 21 years or older and established certain sales and cultivation taxes. Proposition 64 recognizes the authority of local jurisdictions to ban and otherwise regulate commercial cannabis activity. In June, 2017, the California Legislature combined the provisions of MMRSA and AUMA into the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

(g) Since 2014, Kern County has seen a proliferation of new medical cannabis dispensaries. The proliferation of new cannabis dispensaries has led to increased enforcement efforts, which have resulted in a multiplicity of court proceedings with the attendant expenditure of public resources.

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

(i) Data from other jurisdictions, such as Colorado, where recreational use of cannabis has been legalized suggests that the proliferation of cannabis dispensaries can lead to an increase in criminal activity.

(j) 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 cannabis to minors, loitering, heavy vehicle and foot traffic, increased noise, and robberies of customers.

(k) The Kern County Code Compliance Division reports that some business owners located adjacent to or in the vicinity of a medical cannabis 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.

(l) 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 cannabis dispensaries. For the same time period, the Sheriff's Office reports that cannabis dispensaries averaged 4 calls for service. For the higher call volume dispensaries, the most commonly reported crime was burglary.

(m) A recent study of the traffic impacts of cannabis dispensaries in Colorado concluded that cannabis dispensaries generate ten times more traffic than a typical retail store and five times more traffic than a pharmacy. Up until recently, the traffic impacts of medical cannabis dispensaries in Kern County had not been studied. The air quality throughout most of Kern County is poor as it is in extreme non-attainment for criteria pollutants with the detrimental health impacts that result from the presence of such pollutants.

(n) In order to address both community and statewide concerns regarding the establishment of commercial medical cannabis dispensaries and the impact on local enforcement efforts, on October 5, 2015, this Board requested County staff to study the imposition of a ban on medical cannabis dispensaries, deliveries of medical cannabis, and cultivation of medical cannabis. In light of recent legal developments, staff explored alternatives to a ban, including land use regulations that may need to be included in Kern County's Zoning Ordinance related to issues associated with cannabis dispensaries, manufacturing, processing, cultivation and testing and the potential impact such facilities may have on the public health, safety, and welfare of the citizens of Kern County.

(o) This Board has the requisite authority pursuant to Business and Professions Code section 26200 to adopt an ordinance prohibiting commercial cannabis activity.

(p) The sale, use, possession, and distribution of cannabis remains illegal under the Federal Controlled Substances Act. There is currently a conflict between federal laws and California laws regarding the legality of commercial cannabis activities.

(q) Based on the foregoing, this Board finds that allowing any commercial cannabis businesses within the unincorporated areas of Kern County poses a current and immediate threat to the public's health, safety, and welfare.

(r) After a thorough review, the Planning and Natural Resources Department prepared and presented to the Kern County Planning Commission an Environmental Impact Report (EIR), which was found to be complete and adequate in scope; and

(s) The Kern County Planning and Natural Resources Department prepared a report recommending that this Board approve one of two options presented and approve the proposed CEQA action as recommended by the Planning and Natural Resources Department; and

(t) The Clerk of this Board caused notice to be given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and the affidavit of mailing on file with the Clerk of this Board; and

(u) A copy of the report, recommendations of the Planning and Natural Resources Department, and the EIR have been on file in the Office of the Clerk of this Board, available for examination during regular business hours by any interested person, at all times since the date of giving notice in this matter; and

(v) The Director of the Planning and Natural Resources Department furnished to this Board, and this Board has incorporated in the record of this matter, a document setting forth the significant environmental effects identified in the EIR, with proposed findings for consideration by this Board in relation to the significant effects for the purpose of Public Resources Code section 21081 and State CEQA Guidelines sections 15091 and 15093, and setting forth evidence in support of the proposed findings. A member(s) of the Planning and Natural Resources Department appeared before this Board and gave additional testimony in support of the proposed findings; and

(w) During the hearing, this Board considered the adequacy and scope of the EIR and reviewed and considered the information contained in it with respect to the merits of the matters under consideration; and

(x) The public hearing was timely conducted and before making any findings on the EIR or any considerations of the proposal on its merits, this Board called for any objections or comments on the EIR. The proposed amendment and the Planning Commission's recommendation were explained by the Department Director, or her representative, during the hearing, all persons desiring to be heard were heard, this Board considered all of the testimony presented and the recommendations during the public hearing, and the public hearing was concluded.

Section 2. IT IS RESOLVED by the Board of Supervisors of the County of Kern, State of California, as follows:

1. This Board finds that the recited facts are true and that it has the jurisdiction to consider, approve, and adopt this Resolution.

2. This Board incorporates and makes all the findings recommended by staff, whether verbally or in their written reports.

3. This Board finds and determines that the applicable provisions of the California Environmental Quality Act of 1970 ("CEQA"), the State CEQA Guidelines, and the Kern County Guidelines have been observed in conjunction with the hearing and the considerations of this project and all of the previous proceedings.

4. This Board finds and determines the project described is approved despite the existence of certain significant environmental effects identified in the EIR, and this Board makes and adopts the findings with respect to each pursuant to State CEQA Guidelines sections 15091 and 15093 (Title 14, California Code of Regulations) and Public Resources Code section 21081 (CEQA) and declares that it considered the evidence described in connection with each finding.

5. This Board finds and determines that the EIR is complete and adequate in scope and was completed in compliance with the California Environmental Quality Act of 1970, the State CEQA Guidelines, and the Kern County Guidelines for implementation thereof, and that this Board has fully reviewed and considered the information in the EIR with respect to the project, the EIR is declared to be certified.

6. This Board finds and determines that approval of the option to ban all medical and adult use cannabis-related activities other than what is allowed under MAUCRSA in Kern County, shall not be considered operative, vested, or final until such time as the required verification from the Office of the County Clerk is submitted, attesting that payment of fees for the filing of a "Notice of Determination" for the benefit of the California Department of Fish and Wildlife, as required by AB 3158 (Public Resources Code section 10005), has been made.

7. This Board finds and determines the effect upon the environment of such project and the activities and improvements which may be carried out thereunder will not interfere with maintenance of a high-quality environment now or in the future.

8. This Board finds and determines that banning all medical and adult use cannabis-related activities other than what is allowed under MAUCRSA in the unincorporated areas of Kern County is consistent with State law which allows local jurisdiction to ban commercial cannabis activities.

9. This Board finds and determines that banning all medical and adult use cannabis-related activities, other than what is allowed under MAUCRSA, in the unincorporated areas of Kern County is consistent with the Kern County General Plan and the Metropolitan Bakersfield General Plan (these Plans provide guidance so that day-to day decisions are in conformance with the long-range program designed to protect and further the public interest related to Kern County's growth and development). It is consistent with the Kern County General Plan and the Metropolitan Bakersfield General Plan objectives to serve as a guide to the private sector of the economy in relating its development initiatives to the public plans, objectives, and policies of the County.

10. This Board finds and determines that regulation of all medical and adult use cannabis-related activities in the project is consistent with the Police Powers as granted to Kern County in accordance with State law through the regulation of land use and does not conflict with the State's general laws.

11. This Board finds and determines that prohibition of all commercial medical and adult use cannabis-related activities will protect the public health, safety, and welfare through the following actions:

- Ban personal use of cannabis in public, County parks, and in established entertainment venues.
- Create an established, funded Cannabis Activity Enforcement Task Force for active enforcement of the ban.
- Require all illegal retail dispensaries to close immediately.
- Provide a pathway for legally established dispensaries to mitigate any economic impact for closing through a time period to close and a hearing with evidence to ask for an extension of the time to close.

12. This Board finds and determines that the adoption of a County-wide ban of all medical and adult use cannabis-related activities other than what is allowed under MAUCRSA, is in the best interest of the public and is approved; and this Board determines to adopt an ordinance enacting the ban.

13. The Clerk of this Board shall cause a Notice of Determination to be filed with the County Clerk.

14. The Clerk of this Board shall transmit copies of this Resolution to:

Planning and Natural Resources

Public Works

General Services

Fire Chief

Environmental Health

County Counsel

LIUNA (Arthur Izzo)
4399 Santa Anita Avenue, Suite 204
El Monte, CA 91731

#23H4821

COPIES FURNISHED:
<i>See above</i>
<i>11/8/2017</i> (TD)