

ARTICLE V. - MEDICAL MARIJUANA

DIVISION 1. - GENERAL PROVISIONS

Sec. 14-50. - Ban.

The County of Kings hereby prohibits all medical marijuana cooperatives, collectives, and any other form of medical marijuana distribution in all zones in the county. Cultivation of medical marijuana is prohibited in all zones of the county, except for cultivation for personal medicinal use by a qualified patient within a secured, locked and fully enclosed structure on their personal residence as allowed by and consistent with California Health and Safety Code Section 11362.5 et seq.

(Ord. No. 656, § 1, 11-8-11)

Sec. 14-51. - Findings and purpose.

- (a) In 1996, the voters of the State of California approved the Compassionate Use Act (CUA), which is codified in Health and Safety Code Section 11362.5.
- (b) The intent of the CUA was to ensure that seriously ill Californians who are in need of marijuana for medical purposes are not subject to criminal prosecution. The CUA further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."
- (c) In 2004, the Legislature enacted the "Medical Marijuana Program" (MMP), which is codified in Health and Safety Code Section 11362.7 et seq., to clarify the scope of the CUA, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the CUA, and enhance access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.
- (d) Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with the MMP. Section 11362.83 was amended by Assembly Bill 1300 (approved by the Governor on August 31, 2011) to specifically allow cities and counties to adopt and enforce ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective, as well as the civil and criminal enforcement of such an ordinance.
- (e) The Federal Controlled Substance Act, 21 U.S.C. section 801 et seq., classifies marijuana (spelled "marihuana" in the Act) as a Schedule I drug meaning that it has a high potential for abuse, that it has no currently accepted medical use for treatment in the United States, and that it has not been accepted as safe for use under medical supervision; and therefore it is unlawful to cultivate, manufacture, distribute, dispense, or possess marijuana.
- (f) The CUA and the MMP primarily address the criminal law, providing qualified patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither the CUA, nor the MMP, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to the MMP, provides comprehensive civil regulation of premises used for marijuana cultivation or distribution through collectives or cooperatives. The unregulated cultivation and distribution of marijuana in the unincorporated areas of Kings County can adversely affect the health, safety and well-being of the county and its residents.
- (g) Several neighboring communities have documented through law enforcement and media reports serious, adverse impacts associated with the cultivation, distribution and use of medical marijuana including increased crime, burglaries, robberies, violence, illegal sales and use of marijuana, and other

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

- (h) 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. Neighboring counties of Fresno and Tulare have each experienced homicides related to the cultivation or dispensing of marijuana, the most recent including a homicide at a marijuana cultivation site in Tulare County in October of 2011. Law enforcement and media reports from Tulare County indicate there have been at least four home invasions related to marijuana in the last year as well as four shootings related to marijuana within the last year.
- (i) Allowing medical marijuana cooperatives, collectives and any other form of medical marijuana cultivation and/or distribution poses a threat to the public health, safety and welfare of the residents of Kings County. Adopting the regulations contained in this article are necessary and appropriate to maintain and protect the public health, safety and welfare of the residents of Kings County, and by adopting the regulations contained in this article, the board anticipates a significant reduction in the aforementioned harms threatened by the unregulated cultivation, distribution and consumption of marijuana in the unincorporated areas of Kings County.
- (j) The county recognizes the law enforcement dilemma created due to the conflict between the Federal Controlled Substance Act (CSA) and the State CUA and MMP and that federal courts have determined, despite the CUA and the MMP, marijuana has no accepted medical uses and therefore the federal government may enforce the CSA. (Gonzales v. Raich (2005) 545 U.S.1.) While the county in no manner intends or undertakes by adoption of this article to enforce federal law, the county is concerned about interfering with federal law enforcement efforts.
- (k) Nothing in this article shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this article shall be deemed a defense or immunity to any action brought against any person by the Kings County District Attorney, the California Attorney General, or the United States of America.

(Ord. No. 656, § 1, 11-8-11)

Sec. 14-52. - Definitions.

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

- (c) "Cultivation" means planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.
- (d) "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.
- (e) "Marijuana," also known as "marihuana," means medical marijuana as defined in Health and Safety Code Section 11018.
- (f) "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.
- (g) "Qualified patient" means an individual who is entitled to the protections of the Compassionate Use Act and the Medical Marijuana Program.

(Ord. No. 656, § 1, 11-8-11)

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

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

(Ord. No. 656, § 1, 11-8-11)

Sec. 14-54. - Violation.

- (a) Violation of any provision of this article is hereby declared a misdemeanor.
- (b) Violation of any provision of this article shall also be deemed a public nuisance and may be enforced by any remedy available to the county for abatement of public nuisances.
- (c) Each and every violation of this article shall constitute a separate violation and shall be subject to all remedies and enforcement measures enumerated in this chapter, in the Kings County Code of Ordinances and in state law. Each and every day that a violation of this chapter continues to exist shall constitute a separate and distinct violation subject to all available remedies and enforcement.
 - (1) As a nuisance per se, any violation of this chapter shall be subject to injunctive relief, revocation of the registration of occupancy for the location, disgorgement and payment to the county of any and all monies unlawfully obtained, cost of abatement, costs of investigation, attorney fees and any other relief or remedy available at law or equity. The county may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the collective or cooperative and persons related or associated with the collective or cooperative.
 - (2) Each and every violation of this chapter is subject to an administrative fine of \$100.00 for the first violation, \$200.00 for the second violation within one year, and \$500.00 for every subsequent violation within one year.
- (d) All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.
- (e) Nothing in this chapter shall be construed as imposing on the enforcing officer or the County of Kings any duty to issue a notice to abate an unlawful marijuana collective, cooperative or cultivation site, nor to abate any unlawful marijuana collective, cooperative, or cultivation site, nor to take any other action

with regard to any unlawful marijuana collective, cooperative, or cultivation site, and neither the enforcing officer nor the County of Kings shall be held liable for failure to issue an order to abate any unlawful marijuana collective, cooperative, or cultivation site, nor for failure to abate any unlawful marijuana collective, cooperative, or cultivation site, nor for failure to take any other action with regard to any unlawful marijuana collective, cooperative or cultivation site.

(Ord. No. 656, § 1, 11-8-11)

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

- (a) Notice. Whenever an enforcing officer determines that a public nuisance exists on any premises within the unincorporated area of Kings County, he or she is authorized to issue a written notice of abatement and/or administrative citation including the following information:
- (1) Identity of the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor, and identity of the occupant(s), if other than the owner(s), if known;
 - (2) Describe the location of the property sufficient to produce notice of its location (i.e. commonly used street address or the assessor's parcel number);
 - (3) State what section of this article has been violated;
 - (4) Describe the unlawful activity and the actions required to abate said activity;
 - (5) State that the owner or occupant is required to abate the public nuisance within a reasonable time which should not exceed 15 calendar days after the date that said notice was served;
 - (6) State that the owner or occupant may, within 15 calendar days after the date that said notice was served, make a request in writing to the clerk of the board of supervisors for a hearing to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance, or other cause why those conditions should not be abated in accordance with this article;
 - (7) State that, unless the owner or occupant abates the unlawful marijuana collective, cooperative or cultivation site, 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 a notice to abate an unlawful marijuana collective, cooperative or cultivation site or an administrative citation has been served may appeal the determination of the enforcing officer that the conditions set forth in the notice constitute a public nuisance to the board of supervisors, or may show cause before the board of supervisors why those conditions should not be abated in accordance with the provisions of this article. Any such administrative review shall be commenced by filing a written request for a hearing with the clerk of the board of supervisors within 15 calendar days after the date that said notice or citation was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcing officer contained in the notice and/or citation shall become final and conclusive on the sixteenth day following service of the notice and/or citation.
- (1) Upon timely receipt of a written request for hearing which complies with the requirements of this section, the clerk of the board of supervisors shall set a hearing date not less than 15 days nor more than 60 days from the date the request for hearing was filed. The clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the notice and/or citation was served, and to the enforcing officer.
 - (2) Any hearing conducted pursuant to this article need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The board of supervisors has discretion to exclude evidence if it is irrelevant or if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
 - (3) The board of supervisors may continue the administrative hearing.
 - (4) A quorum of board of supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice to abate an unlawful marijuana collective, cooperative, or cultivation site 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 unlawful marijuana collective, cooperative or cultivation site, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice and/or citation. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice and/or citation was served, and the enforcing officer.
 - (5) The decision of the board of supervisors shall be final and conclusive.
- (d) Liability for costs. In any enforcement action brought pursuant to this article, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful marijuana collective, cooperative or cultivation site, to exist shall be liable for all costs incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this article, whether those costs are incurred prior to, during, or following enactment of this chapter. In any action by the enforcing officer to abate the unlawful marijuana collective, cooperative or cultivation site, under this article, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the county elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or

special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.

- (e) Enforcement. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana collective, cooperative, or cultivation site within 15 days of the date of service of the notice to abate an unlawful marijuana collective, cooperative, or cultivation site, unless timely appealed, or of the date of the decision of the board of supervisors requiring such abatement, the enforcing officer may take one or more of the following actions:
 - (1) Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the board of supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this article be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or
 - (2) Request that the county counsel commence a civil action to redress, enjoin, and abate the public nuisance; and/or
 - (3) Continue issuing administrative fines each and every day that the unlawful marijuana collective, cooperative, or cultivation site remains in violation of this article.
- (f) Accounting. The enforcing officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the board of supervisors showing the cost of abatement and the administrative costs for each parcel.
 - (1) Notice of hearing on accounting; waiver by payment. Upon receipt of the account of the enforcing officer, the clerk of the board of supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, he or she has the right to appeal the accounting to the board by filing a written request for appeal hearing with the clerk of the board of supervisors within ten calendar days of the date of service of the accounting according to subdivision (b) above. The determination of the enforcing officer on the accounting shall be final unless a timely appeal to the board is requested. Failure to timely appeal the accounting determination of the enforcing officer is a failure to exhaust administrative remedies. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration shall be deemed a waiver of the right to appeal the accounting and an admission that said accounting is accurate and reasonable.
 - (2) Hearing on accounting.
 - i. The board of supervisors shall meet to review the report of the enforcing officer after receiving a written request for appeal. An owner may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.
 - ii. The report of the enforcing officer shall be admitted into evidence and shall be prima facie evidence of the cost reported therein. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.
 - iii. The board of supervisors shall also determine whether or not the owner had actual knowledge of the unlawful marijuana collective, cooperative, or cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner did not have actual knowledge of the unlawful marijuana collective, cooperative, or cultivation, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such parcel or otherwise attempted to be collected from the owner of such parcel.

- iv. The board of supervisors shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.
- (g) Special assessment and lien. The board of supervisors may order that the cost of abating nuisances pursuant to this article and the administrative costs as confirmed by the board be placed upon the county tax roll by the county auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to Government Code Section 25845; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The board of supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to Government Code Section 25845.
- (h) Enforcement by civil action. As an alternative to the procedures set forth above, the county may abate the violation of this article by the prosecution of a civil action through the office of the county counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this article or requiring compliance with other terms.
- (i) Summary abatement. Notwithstanding any other provision of this article, when any unlawful marijuana collective, cooperative, or cultivation site 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.

(Ord. No. 656, § 1, 11-8-11)

Secs. 14-56—14-74. - Reserved.

ARTICLE XI. - ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA DISPENSARIES, TEMPORARILY PROHIBITION^[2]

Footnotes:

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Editor's note—Ord. No. 654, §§ 1—6, adopted August 2, 2011, did not specifically amend the Code. Subsequently, Ord. No. 654.1, adopted September 13, 2011, amended Ord. No. 654. The provisions of Ord. No. 654.1, §§ 1—7, have been included herein as Art. XI, §§ 15-231—15-237, at the discretion of the editor. See also the Code Comparative Table.

Sec. 15-231. - [Findings.]

The board finds and declares as follows:

- (1) In 1996, the voters of the State of California approve Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.

- (2) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.
- (3) Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with the Medical Marijuana Program.
- (4) The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- (5) Facilities which dispense marijuana have proven to have serious harmful effects on the neighborhoods in which they are located, to owners of property in such neighborhoods, and to citizens living, visiting, shopping, conducting business or otherwise present in the area, as reported by several other California counties and cities. Such effects are due to such factors as the illegal nature of the activity, the presence of large quantities of marijuana at the dispensaries, the presence of large amounts of cash, the presence of weapons, and other factors. Harmful effects at the dispensaries and the surrounding areas have included an increase in burglaries, robberies, illegal sales of drugs, use or possession of marijuana by unauthorized persons, attacks on persons entering or leaving the premises, loitering, smoking marijuana in public places, and driving while under the influence of marijuana.
- (6) For the above reasons, staff is developing proposed regulations which the board can consider adopting, to regulate medical marijuana dispensaries so as to prevent the above harmful effects on the County of Kings unincorporated areas.
- (7) In February 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana facilities. This statement, along with other factors, has resulted in burgeoning interest in establishing medical marijuana dispensaries in the State of California and the region of the County of Kings (including incorporated cities within the county). In response, numerous cities and counties around the state are enacting regulations. Among the counties adjacent to Kings County, many agencies have recently enacted ordinances either prohibiting or regulating medical marijuana dispensaries, or establishing a moratorium on medical marijuana dispensaries. These regulations can be expected to have the effect of redirecting persons desirous of establishing such dispensaries, to consider doing so in the unincorporated area of Kings County. The county has received several inquires regarding the establishment of medical marijuana dispensaries.
- (8) Proposition 215 and Senate Bill 420 do not preempt local zoning or nuisance regulations affecting medical marijuana-related land uses; rather, Senate Bill 420 (Health and Safety Code Section 11362.83) expressly allows cities and counties to adopt and enforce ordinances that are consistent with state law. The scope of local regulatory power continues to be challenged by proponents of medical marijuana-related land uses, and is presently being resolved by the appellate courts in cases such as *City of Claremont v. Kruse* 177 Cal.App.4th 1153 (2009) and *Qualified Patients Ass'n v. City of Anaheim*, 187 Cal.App.4th 734 (2010).
- (9) Under the current provisions of the Kings County Zoning Code (Appendix "A" of the Kings County Code of Ordinances), medical marijuana dispensaries are not identified as a permitted use, or a use permitted subject to a use permit, in any zoning district in the county. Further, medical marijuana dispensaries are not found to be substantially similar to other permitted uses; permitted uses, site plan review; or conditional uses. The county interprets these provisions to mean that such uses are prohibited. However, the county recognizes that numerous other local governments have faced arguments that medical marijuana dispensaries are permitted uses under similar

ordinances, or are encompassed within generic permitted uses, such as "miscellaneous retail" or "medical clinics."

- (10) The county is currently engaged in the consideration and study of possible means of regulating or prohibiting medical marijuana dispensaries, including zoning regulations and other regulations, and by this article shall direct the continuation of such consideration and study.
- (11) If medical marijuana dispensaries are allowed to be established, developed, constructed, maintained, or operated in the county without appropriate regulations, such uses may be established in areas, or operated in a manner, that would conflict with the proposed regulations to be considered and studied by the county, and would therefore defeat the purpose of the proposal to study and adopt new regulations regarding medical marijuana dispensaries.
- (12) The establishment, development, construction, maintenance, or operation of medical marijuana dispensaries, and the continued approval of use permits, variances, building permits, or any other applicable entitlements authorizing their establishment, would result in a current and immediate threat to the public health, safety and welfare, because such uses threaten to cause the harmful "secondary effects" identified above within the unincorporated area of the County of Kings, and because such uses may frustrate the accomplishment of the goals of the medical marijuana dispensary regulations that the county will consider and study. It is therefore necessary to adopt this article to prohibit their establishment, development, construction, maintenance, or operation during the period of such consideration and study.
- (13) On August 2, 2011, the Board of Supervisors of the County of Kings adopted Ordinance Number 654 temporarily prohibiting the establishment or operation of medical marijuana dispensaries, which will expire on September 15, 2011 unless further extended as provided by law.
- (14) On September 13, 2011, the Board of Supervisors of the County of Kings held a public hearing wherein they received testimony regarding the extension of the temporary prohibition on the establishment or operation of medical marijuana dispensaries.

(Ord. No. 654.1, § 1, 9-13-11)

Sec. 15-232. - Definitions.

For the purpose of this article, the following terms shall have the following meanings:

- (1) Development application shall mean an application for any permit or approval to be issued by any County of Kings officer, department or other agency, including subdivisions, use permits, variances, building permits, or any other entitlement for use.
- (2) Collective means an association or combination of primary caregivers and/or qualified patients jointly cultivating and/or storing marijuana for medical purposes as provided in Health and Safety Code Section 11362.775.
- (3) Cooperative means an association or combination of primary caregivers and/or qualified patients jointly cultivating and/or storing marijuana for medical purposes as provided in Health and Safety Code Section 11362.775, and properly incorporated under the California Corporations or Food and Agriculture Code.
- (4) Medical marijuana dispensary shall mean: a collective or cooperative maintaining a physical operating location within the unincorporated areas of Kings County.
- (5) Marijuana shall have the same meaning as that set forth in Health and Safety Code Section 11018.
- (6) Person shall include: Any natural person, association, corporation, cooperative, partnership, collective, limited liability company, or any other social or business entity.

(Ord. No. 654.1, § 2, 9-13-11)

Sec. 15-233. - Prohibitions.

No person shall cause or permit the establishment, development, construction, maintenance, operation, or enlargement of a medical marijuana dispensary, within the unincorporated areas of the County of Kings, nor shall any development application be accepted, filed, processed, issued or approved for such a medical marijuana dispensary during the term of this moratorium ordinance. This interim ordinance shall in no way limit the right to possess or use marijuana for medicinal purposes as is presently authorized by the laws of the State of California as set forth in the Health and Safety Code.

(Ord. No. 654.1, § 3, 9-13-11)

Sec. 15-234. - Reporting.

The county administrative officer or his/her designee is directed to issue a written report describing the measures taken by the county to alleviate the conditions which have led to the adoption of this article, at least ten days prior to the expiration of this article.

(Ord. No. 654.1, § 4, 9-13-11)

Sec. 15-235. - Direction.

The board of supervisors hereby directs the chief administrative officer, in consultation with county counsel, sheriffs office, district attorney, department of public health, probation department, and the community development agency to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning and other regulations.

(Ord. No. 654.1, § 5, 9-13-11)

Sec. 15-236. - Time period.

This article shall be in effect until the earlier of the following, and shall thereupon be repealed and of no further force or effect:

- (1) The completion of study, consideration and legislative action upon the proposed regulations for medical marijuana dispensaries referred to in section 15-235, designated as such by the board of supervisors; or
- (2) Ten months and 15 days from September 15, 2011.

(Ord. No. 654.1, § 6, 9-13-11)

Sec. 15-237. - Report.

Pursuant to Government Code Section 65858, Subdivision (d), the Board of Supervisors of the County of Kings hereby ratifies and approves the report issued by the county on August 26, 2011 describing the measures taken to alleviate the conditions which led to the adoption of Ordinance 654.

(Ord. No. 654.1, § 7, 9-13-11)