



BILL NO. B-44

ORDINANCE NO. 2011-41

AN INTERIM URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, RELATING TO PLACING A MORATORIUM ON OUTDOOR CULTIVATION OF MEDICAL MARIJUANA IN THE CITY OF FRESNO PURSUANT TO GOVERNMENT CODE SECTION 65858 PENDING THE DEVELOPMENT OF STANDARDS AND REGULATIONS RELATING TO CULTIVATION AND DISPENSING AS A NEW LAND USE STANDARD.

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, et seq., and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, California Health and Safety Code Section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, the City has no explicit rules or regulations governing the outdoor cultivation of medical marijuana; and

WHEREAS, there is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Unless adopted on an urgency basis, outdoor cultivation could occur without any specific regulations applicable to it

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Effective _____

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and could create inconsistent incompatible land use. Cultivation of medical marijuana requires careful consideration and regulations to the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses; and

WHEREAS, adopting this urgency ordinance will allow the City time to research, draft and adopt a more permanent regulation regarding outdoor cultivation of medical marijuana; and

WHEREAS, the City of Fresno is the fifth largest City in California and has a substantial percentage of non-owner occupied rental properties and vacant foreclosures. The numerous rental properties and foreclosures have attracted unauthorized marijuana cultivation activities resulting in damage to these properties.

WHEREAS, federal law prohibits use of marijuana, regardless of the reason for such use; while state law decriminalizes under state law the use of medical marijuana on limited terms and conditions; and

WHEREAS, this Ordinance complies with the applicable state law, as well as imposes reasonable rules and regulations protecting public health, safety, and the welfare of the residents and businesses within the incorporated area of the City of Fresno; and

WHEREAS, The City of Fresno Police Department, City residents and other public entities have reported adverse impacts from the outdoor cultivation of medical marijuana within the City, including offensive odors, increased risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes; and

WHEREAS, the strong odor of marijuana plants, which increases as the plants mature, is offensive to many individuals and creates and an attractive nuisance, alerting people to the



location of valuable marijuana plants and creating an increased risk of crime; and

WHEREAS; children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children such as schools, parks, and similar locations; and

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City to modify the City of Fresno Municipal Code by adding regulations pertaining to the cultivation of medical marijuana within the City; and

WHEREAS, it is the Council's intention that nothing in this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, by permitting, or otherwise allowing, any activity which is lawfully and constitutionally prohibited under the Act.

WHEREAS, Mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this Chapter shall be construed, in any way, to expand the rights of anyone to: use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal.

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WHEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1. URGENCY. Currently, the City has no explicit rules or regulations governing the



outdoor cultivation of medical marijuana. A number of outdoor medical marijuana cultivation sites have been established in the incorporated areas of the City of Fresno, and the City of Fresno Department of Public Works and Development and Resource Management Department have received inquiries from prospective operators of such sites about the cultivation in the incorporated areas of the City. There is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Unless adopted on an urgency basis, outdoor cultivation could occur without any specific regulation applicable to it and could create inconsistent and incompatible land use. Cultivation of medical marijuana requires careful consideration and regulation of the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses. Federal law prohibits use of marijuana, regardless of the reason for such use; while state law decriminalizes the use of medical marijuana on limited terms and conditions. This Ordinance both complies with applicable state law, and imposes reasonable rules and regulations which protect the public health, safety and welfare of the residents and businesses within the incorporated area of the City of Fresno. By adopting this urgency ordinance, it will allow the City to research, draft and adopt a more permanent regulation of outdoor medical marijuana cultivation.

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SECTION 2. PUBLIC THREAT TO HEALTH, SAFETY OR WELFARE.

A. The voters of the State of California approved Proposition 215 (codified as 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 be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. Further, effective January 1, 2004, the State Legislature enacted Senate Bill (SB) 420 to clarify the scope of The Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420; and

B. The Council finds that there is a current and immediate threat to the public health, safety or welfare posed by the location and outdoor cultivation of medical marijuana, and further finds:

C. The Compassionate Use Act expressly encourages federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. The Council finds that the safe distribution of marijuana, as contemplated by the Compassionate Use Act, includes the safety of all the citizenry of the City, not only users of medical marijuana. To find otherwise would elevate the rights of some individuals who use medical marijuana over the safety of others.

D. Further, the Compassionate Use Act expressly states that nothing in that act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversions of marijuana for nonmedical purposes.

E. The Medical Marijuana Program Act, Health and Safety Code Sections 11362.7 et seq., expressly states that nothing in the act shall prevent a City or other local governing board from adopting and enforcing laws consistent with the Medical Marijuana Program Act. The Council finds that this ordinance is consistent with the Medical Marijuana Program Act in that it advances the goals of the Compassionate Use Act by allowing for the development of a plan for



the safe cultivation and distribution of medical marijuana.

F. Medical marijuana and nonmedical marijuana are indistinguishable when on the marijuana plant.

G. There have been many reports of violence incidental to the outdoor cultivation of marijuana, whether medical or nonmedical. Recently, there were reports of five shootings within the City of Fresno relating to marijuana. One shooting resulted in a death and the voluntary manslaughter conviction of the shooter/medical marijuana grower. This resulted in a 25 year prison sentence to the convicted, medical marijuana grower.

H. Reports of marijuana related threats to neighboring landowners and other citizens have escalated in recent months. The unregulated outdoor cultivation of medical marijuana poses a current and immediate threat to public health, safety and welfare. During the 2010 fall harvesting season, the Fresno Police Department received 52 complaints from citizens on the Narcotics Hotline specifically complaining of the strong odor of marijuana and increased pedestrian/vehicular traffic. Outdoor marijuana cultivation attracts a considerable amount of non-residents driving or walking into these neighborhoods. Peak harvest starts at the beginning of October until the end of October or early November. During this time, marijuana buds are heavy with THC (delta-9-tetrahydrocannabinol) resin and produce a strong and noticeable odor. Children are subjected to the heavy odor of marijuana and increased pedestrian/vehicular traffic while walking to and from nearby schools. As marijuana crops are typically planted after harvest, the next crop will be planted November of 2011. During the first nine months of 2011, the Fresno Police Department received 195 complaints from citizens specifically complaining of marijuana cultivation. Without this moratorium plantings of new crops of marijuana will occur



without the City's ability to control as to location and manner of growing marijuana.

I. The City is currently working on development of ordinances to address issues relating to the cultivation of medical marijuana. Until such time as those ordinances are adopted, it is necessary to prohibit the outdoor cultivation of medical marijuana.

SECTION 3: INTENTIONS.

A. Council is mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law. It is the Council's intention that nothing in this Ordinance shall be deemed to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act. Council's intention is that nothing in this Chapter shall be construed, in any way, to expand the rights of anyone to: use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal.

B. The outdoor cultivation of all marijuana in the incorporated areas of the City of Fresno is hereby prohibited pending the development of standards and regulations relating to cultivations; and

C. Violation of this Ordinance shall be deemed a public nuisance pursuant to Fresno Municipal Code section 10-605(l), and also shall be deemed a misdemeanor; and

D. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061 (b) (3).

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a



court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that is would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one of more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 5. EFFECTIVENESS. This Interim Urgency Ordinance No. 11- 41 is hereby adopted to protect the public health, safety and welfare and is adopted as an urgency measure pursuant to the provision of Government Code section 65858 and shall become effective and in full force and effect upon adoption for a term of forty-five days, unless extended by the Council for a maximum of ten (10) months and fifteen (15) days and shall remain in effect unless earlier terminated or extended.

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This ordinance shall become effective and in full force and effect at 12:01 a.m. on December 15, 2011.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 15th day of December, 2011.

AYES : Baines, Borgeas, Quintero, Westerlund, Xiong, Brand



NOES : Olivier
ABSENT : None
ABSTAIN: None

Mayor Approval: _____ N/A _____, 2011

Mayor Approval/No Return: _____ N/A _____, 2011

Mayor Veto: _____ N/A _____, 2011

Council Override Vote: _____ N/A _____, 2011

REBECCA E. KLISCH
City Clerk

BY: 
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: 
Michael D. Flores, Deputy

MDF:ns [57138ns/ORD]- 12/1/2011