

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____

MOVED BY Calhoun SECONDED BY Perea

BILL NO. B-113

ORDINANCE NO. 2004-112

AN EMERGENCY ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, ADDING SECTION 8-221 TO THE FRESNO
MUNICIPAL CODE, RELATING TO MEDICAL MARIJUANA
DISPENSARIES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 8-221 of the Fresno Municipal Code is added to read:

SECTION 8-221. MEDICAL MARIJUANA DISPENSARIES.

(a) It is the purpose and intent of this ordinance to promote the health, safety, morals, and general welfare of the residents and businesses within the City by regulating Medical Marijuana Dispensaries.

(b) "Medical Marijuana" is defined in strict accordance with California Health and Safety Code section 11362.5 *et seq.*

(c) "Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code section 11362.5 *et seq.* Unless otherwise regulated by this Code or applicable law,

Adopted _____
Approved 10/26/04
Effective _____

2004-112

a “medical marijuana dispensary” shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 *et seq.*

(d) Medical Marijuana Dispensaries where medical marijuana is distributed by, distributed to, or made available to any combination of three or more qualified patients, persons with an identification card, or primary caregivers as defined by California Health and Safety Code § 11362.5 *et seq.* are prohibited.

(e) Medical Marijuana Dispensaries are prohibited from engaging in the sale of any item other than medical marijuana as allowed by law.

(f) No more than one medical marijuana dispensary may operate out of a single building.

SECTION 2. This ordinance is declared to be necessary as an emergency measure for preserving the public peace, health and safety, and shall take effect immediately. The following is a statement of facts showing its urgency.

The Compassionate Use Act (Health and Safety Code § 11362.5 *et seq.*) provides for the medical use of marijuana that has been deemed appropriate and recommended by a physician who has determined that the person's health would benefit from the use of marijuana. The Act is also intended to ensure that patients and their primary caregivers who obtain, cultivate, or use marijuana for medical purposes are not subject to criminal prosecution or sanctions. The Act allows for a patient to designate someone as his or her primary caregiver. The Act also allows a person to be the primary caregiver to an unlimited number of patients. This provision of the Act allows a primary caregiver to obtain, possess, cultivate, transport and distribute vast amounts of marijuana without restrictions. In several cities, caregivers have used the provision to set up Medical Marijuana Dispensaries (MMD) at fixed locations. Police officials were contacted in Roseville, Oakland, Hayward, Lake County and Fairfax. All of these cities have operating MMD's and report adverse impacts in and around these facilities. Some of the problems observed in these other cities are:

- Smoking of marijuana in and around the facility.
- Patients congregating and smoking marijuana at nearby parks.
- Attempted burglaries into the dispensary building.
- Increase in crime near the dispensary.
- Negative impact on nearby businesses.
- Increase in the number of people coming from out of town to obtain recommendations and drugs.

Without a city ordinance in place, MMD's could operate within the city without restriction. Presently, there is nothing to prevent an individual or business from establishing a medical marijuana dispensary within the city limits of Fresno. There is presently nothing to prevent an individual or business from traveling throughout the City of Fresno transporting large quantities of marijuana for distribution to qualified individuals. Adopting the proposed ordinance on an emergency basis would allow the City to immediately begin enforcing the proposed restrictions on the establishment of Medical Marijuana Dispensaries. Immediate implementation of the ordinance would also prevent individuals or businesses from establishing Medical Marijuana Dispensaries while the Council considers adoption of the proposed companion zoning ordinance. The emergency ordinance is necessary to prevent having one or more Medical Marijuana Dispensaries open and later claiming a legally existing but non conforming use.

Adopted by the Council of the City of Fresno on the 26th day of October, 2004.

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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 26th day of October, 2004.

AYES : Boyajian, Calhoun, Perea, Sterling, Castillo
NOES : Dages, Duncan
ABSENT : None
ABSTAIN : None

Mayor Approval: N/A, 2004

Mayor Approval/No Return: N/A, 2004

Mayor Veto: N/A, 2004

Council Override Vote: N/A, 2004

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
~~Deputy~~

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
Deputy

JMS:dlv [31469dlv/ord] 09/07/04