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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA
ORDINANCE NO. _____

INTERIM URGENCY ORDINANCE NO. 10-019, ADOPTED ON SEPTEMBER 14, 2010, AS AN URGENCY MEASURE PURSUANT TO GOVERNMENT CODE SECTION 65858, IS HEREBY EXTENDED.

SECTION 1: The Board of Supervisors of the County of Fresno finds as follows:

Currently, the County has no explicit rules or regulations governing the indoor or outdoor cultivation of medical cannabis. A number of outdoor medical marijuana cultivation sites have been established in the unincorporated areas of Fresno County and the Fresno County Department of Public Works and Planning has received inquiries from prospective operators of such sites about cultivating in the unincorporated areas of the County. There is insufficient time for the County 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 cannabis, regardless of the reason for such use; while state law allows the use of medical cannabis on limited terms and conditions. This Ordinance both complies with applicable state law, as well as imposing reasonable rules and regulations protecting the public health, safety, and welfare of the residents and businesses within the unincorporated area of Fresno County.

SECTION 2: The Board of Supervisors of the County of Fresno finds as follows:

- 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 cannabis for medical purposes

1 to be able to obtain and use it without fear of criminal prosecution under limited, specified
2 circumstances. Further, effective January 1, 2004, the State Legislature enacted Senate Bill
3 (SB) 420 to clarify the scope of The Compassionate Use Act of 1996 and to allow counties
4 and other governing bodies to adopt and enforce rules and regulation laws consistent with SB
5 420; and

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

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

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

17 E. The Medical Marijuana Program Act, Health and Safety Code Sections 11362. 7 and
18 following, expressly states that nothing in that act shall prevent a city or other local governing
19 board from adopting and enforcing laws consistent with the Medical Marijuana Program Act.
20 The Board finds that this ordinance is consistent with the Medical Marijuana Program Act in
21 that it advances the goals of the Compassionate Use Act by allowing for the development of a
22 plan for the safe distribution of medical marijuana.

23 F. Fresno County is within a High Intensity Drug Trafficking Area, as designated by the
24 White House Office of National Drug Control Policy. Nonmedical marijuana cultivation
25 continues to be a serious problem within Fresno County. The County has received federal
26 grants for the eradication of nonmedical marijuana grown on public lands.

27 G. Medical marijuana and nonmedical marijuana are indistinguishable when on the
28 marijuana plant.

1 H. There have been many reports of violence incidental to the outdoor cultivation of
2 marijuana, whether medical or nonmedical. Immediately prior to the Board's interim urgency
3 ordinance on September 14, 2010, there were reports of two shootings within Fresno County
4 related to marijuana. One of the two shootings resulted in death. The reports of marijuana
5 related threats to neighboring landowners and other citizens have escalated in recent months.
6 The unregulated outdoor cultivation of medical marijuana poses a current and immediate
7 threat to public health, safety and welfare.

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

11
12 SECTION 3:

13 A. It is the Board of Supervisors' intention that nothing in this Ordinance shall be deemed
14 to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. Section
15 841, nor to otherwise permit any activity that is prohibited under that Act. It is further the
16 Board of Supervisors' intention that nothing in this Ordinance shall be construed to (1) allow
17 persons to engage in conduct that endangers others or causes a public nuisance, (2) allow
18 the use of cannabis for non-medical purposes, or (3) allow any activity relating to the
19 cultivation, distribution, or consumption of cannabis that is otherwise illegal; and

20 B. This Ordinance continues to enact a prohibition on the outdoor cultivation of medical
21 marijuana in all zone districts in the unincorporated areas of Fresno County pending the
22 development of standards and regulations relating to cultivation; and

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

25 SECTION 4:

26 If any section, subsection, sentence, clause or phrase or word of this Ordinance is for
27 any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent
28 jurisdiction, such decision shall not affect the validity of the remaining portions of this

1 Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted
2 this Ordinance and each and all provisions thereof irrespective of the fact that any one or
3 more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

4 SECTION 5:

5 Interim Urgency Ordinance No. 10-019 is hereby extended for an additional period of
6 ten (10) months and fifteen (15) days, and shall remain in effect until September 14, 2011,
7 unless earlier terminated or extended.

8 THE FOREGOING WAS PASSED AND ADOPTED BY THE FOLLOWING VOTE OF
9 THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO THIS _____ DAY OF
10 _____ 2010, TO-WIT:

11
12 AYES:

13 NOES:

14 ABSENT:

15
16 _____
JUDITH G. CASE, CHAIRMAN
BOARD OF SUPERVISORS

17 ATTEST:

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20 _____
BERNICE SIEDEL, CLERK
BOARD OF SUPERVISORS

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