

1 BEFORE THE BOARD OF SUPERVISORS

2 OF THE COUNTY OF FRESNO

3 STATE OF CALIFORNIA

4 ORDINANCE NO. 10-016

5 INTERIM URGENCY ORDINANCE NO. 10-014, ADOPTED ON JULY 13, 2010, AS
6 AN URGENCY MEASURE PURSUANT TO GOVERNMENT CODE SECTION 65858, IS
7 HEREBY EXTENDED.

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

9 Currently, the County has no explicit rules or regulations governing medical cannabis
10 or dispensaries of medical cannabis. A number of medical marijuana dispensaries have
11 opened in the unincorporated areas of Fresno County and the Fresno County Department of
12 Public Works and Planning has received inquiries from prospective operators of such
13 dispensaries about opening such a dispensary in the unincorporated area of the County.
14 There is insufficient time for the County to adopt a regular, non-urgency ordinance applicable
15 to such dispensaries. Unless adopted on an urgency basis, such a dispensary may open
16 without any specific regulation applicable to it and create inconsistent and incompatible land
17 use. Such dispensaries require careful consideration and regulation of the location and
18 manner in which they are to operate, if the County should approve the operation of such
19 dispensaries, so as to prevent impacts on nearby residents and businesses. Federal law
20 prohibits such dispensaries and use of cannabis, regardless of the reason for such use; while
21 state law allows the use of medical cannabis on limited terms and conditions. This Ordinance
22 both complies with applicable state law, as well as imposing reasonable rules and regulations
23 protecting the public health, safety, and welfare of the residents and businesses within the
24 unincorporated area of Fresno County.

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

2 A. The voters of the State of California approved Proposition 215 (codified as Health and
3 Safety Code Section 11382.5 g. and entitled "The Compassionate Use Act of 1996"). The
4 intent of Proposition 215 was to enable persons who are in need of cannabis for medical
5 purposes to be able to obtain and use it without fear of criminal prosecution under limited,
6 specified circumstances. Further, effective January 1, 2004, the State Legislature enacted
7 Senate Bill (SB) 420 to clarify the scope of The Compassionate Use Act of 1996 and to allow
8 counties and other governing bodies to adopt and enforce rules and regulation laws consistent
9 with SB 420; and

10 B. The Court of Appeal of California, Second Appellate District rendered a decision in the
11 matter of *City of Claremont v. Darrell Kruse*, (2009) 177 Cal App. 4th 1153, on August 27,
12 2009. In that decision, the Court held that neither The California Compassionate Use Act of
13 1996 nor the California Medical Accommodation Program compels the establishment of local
14 regulations to accommodate medical marijuana dispensaries. The Court of Appeal of
15 California, Fourth Appellate District is currently considering similar questions relating to The
16 Compassionate Use Act and local zoning control in *Qualified Patients Association v. City of*
17 *Anaheim, Case No G040077*. The court has not released a decision in that case; and

18 C. The Board finds that there is a current and immediate threat to the public health, safety
19 or welfare posed by the location and operation of medical cannabis dispensaries; and

20 SECTION 3:

21 A. Medical Cannabis Dispensary facilities where medical cannabis is made available
22 pursuant to Health and Safety Code Section 11362.5 (The Compassionate Use Act of 1996)
23 or Sections 11362.7 through 11362.83 (Medical Marijuana Program) are prohibited in all
24 zones; and

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

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

10 SECTION 4:

11 If any section, subsection, sentence, clause or phrase or word of this Ordinance is for
12 any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent
13 jurisdiction, such decision shall not affect the validity of the remaining portions of this
14 Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted
15 this Ordinance and each and all provisions thereof irrespective of the fact that any one or
16 more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

17 SECTION 5:

18 Interim Urgency Ordinance No. 10-014 is hereby extended for an additional period of
19 twenty-two (22) months and fifteen (15) days, and shall remain in effect until July 13, 2012,
20 unless earlier terminated.

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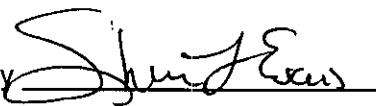
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THE FOREGOING was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this 24th day of August, 2010, to-wit:

AYES: Supervisors Perea, Poochigian, Anderson, Larson, Case
NOES: None
ABSENT: None


CHAIRMAN, Board of Supervisors

ATTEST:
BERNICE E. SEIDEL
Clerk, Board of Supervisors

By 
Deputy

AGENDA NO.: 9
ORDINANCE NO.: 10-016