



Agenda Item 13

DATE: July 13, 2010

TO: Board of Supervisors

FROM: Margaret Mims, Sheriff *M. Mims*

Alan Weaver, Director *Alan Weaver*
Department of Public Works and Planning

SUBJECT: Regulation of Medical Cannabis (Marijuana) Dispensaries

RECOMMENDED ACTION:

1. Consider and adopt Resolution of Intention initiating amendments to various sections of the Fresno County Zoning Ordinance addressing operation of medical cannabis dispensaries in the unincorporated areas of Fresno County; and
2. Consider and adopt Interim Urgency Ordinance pursuant to Government Code Section 65858 establishing a moratorium on the operation of medical cannabis dispensaries in the unincorporated areas of Fresno County (4/5 vote required).

The Sheriff and the Department of Public Works and Planning have determined that it is prudent to clarify the County's position relative to medical cannabis (marijuana) dispensaries while reviewing the County's Zoning Ordinance for possible revision. Adoption of the recommended action would initiate the Amendment to Text review process necessary to accomplish this and temporarily prohibit the establishment of marijuana dispensaries in the unincorporated areas of Fresno County.

ALTERNATIVE ACTION:

Determine that initiation of the proposed Amendment to Text process is not necessary and determine that the specific findings cannot be made pursuant to Government Code Section 65858 and take no action on the proposed Agenda Item.

ADMINISTRATIVE OFFICE REVIEW *Brandi Orth* Page 1 of 9
 BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____ ANDERSON _____ CASE _____ LARSON _____ PEREA _____ POCHIGIAN _____

FISCAL IMPACT:

Approval of the recommended action represents a net County cost of approximately \$8,000.00, which would be absorbed within the Department's existing budget in Org. No. 43600200. This cost would, however, defer or displace other current overall workload activities budgeted in this account.

IMPACTS ON JOB CREATION:

Approval of the recommended action would not affect the efforts to create jobs in Fresno County.

BACKGROUND / DISCUSSION:

In 1996, the voters passed Proposition 215, The Compassionate Use Act, permitting seriously ill persons to use medical marijuana providing they first obtain a doctor's recommendation. Proposition 215 also provided a defense for doctors against professional or legal sanctions for recommending marijuana.

In 2004, the Legislature clarified The Compassionate Use Act with the adoption of SB 420 (Medical Marijuana Program). The intent of SB 420 is to:

1. Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; and
2. Promote uniform and consistent application of the act among the counties within the state; and
3. Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

In 2008, the Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* (Guidelines). The Guidelines note that although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. The only recognized entities are cooperatives and collectives operating substantially in compliance with the Guidelines. It is the opinion of the Office of the Attorney General that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines are likely operating outside the protection of Proposition 215 and the Medical Marijuana Program.

In 2009, the California Court of Appeal for the Second Appellate District issued its opinion in *City of Claremont v. Kruse*. Kruse opened a medical marijuana dispensary within the City of Claremont without obtaining the proper land use permits. Upon learning of the dispensary, the City Council adopted an Urgency Ordinance similar to the one before your Board barring medical marijuana dispensaries from the City. Kruse challenged the City's actions and the trial court upheld the City's Ordinance. Kruse appealed the trial courts decision. On appeal, the court upheld the City's Ordinance and held that neither the California Medical Marijuana Program nor The Compassionate Use Act requires a city to establish local regulations to accommodate medical marijuana dispensaries.

The Court of Appeal of California, Fourth Appellate District, is currently considering similar questions relating to The Compassionate Use Act and local zoning control in *Qualified Patients Association v. City of Anaheim, Case No G040077*. The court has not released a decision in that case.

Since the adoption of SB 420, many California jurisdictions have experienced the proliferation of medical marijuana dispensaries located in a variety of locations with insufficient regard for public health, safety, welfare, or land use compatibility. Dispensaries operating illegally could result in excessive amounts of marijuana or cash, weapons, or illicit drugs. Other legal concerns include the payment of applicable taxes, purchases from, or sales or distribution to, non-members, distribution outside of California, and illegal gang or organized crime activity. Land use issues include loitering, trespass, and compatibility with schools, parks and other places where children are present.

To date, the Department of Public Works and Planning has received approximately 15 to 20 inquiries regarding the establishment of marijuana dispensaries in Fresno County. Initially the Department classified the dispensaries as pharmacies and similar types of uses and communicated this to members of the public. Pharmacies and similar types of uses are permitted "by-right" in the County's commercial zoning districts and permitted by a Conditional Use Permit in the County's Planned Urban Village and Rural Settlement Districts, and in Agricultural Commercial Centers. Department staff is aware of four existing dispensaries, two of which are not located in zoning districts where pharmacies are permitted and as a result, zoning violations were initiated and are currently in process.

In order to adopt an Interim Urgency Ordinance, your Board must make specific findings pursuant to Government Code Section 65858 as follows:

1. That there is a current and immediate threat to the public health, or welfare; and
2. That the approval of additional entitlements for the land use would result in that threat to public health, safety, or welfare.

If adopted, the Interim Urgency Ordinance would be in effect for 45 days and could be extended once for 22 months and 15 days for a period not to exceed two years. It is anticipated that the additional extension will be needed in order to allow adequate time to process and prepare and complete processing of the Amendment to Text Application.

1 The foregoing Resolution of Intention was approved by the following vote of the Board
2 of Supervisors of the County of Fresno this 13th day of July 2010, to-wit:

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AYES:

NOES:

ABSENT:

JUDITH G. CASE, CHAIRMAN
BOARD OF SUPERVISORS

ATTEST:

BERNICE SIEDEL, CLERK
BOARD OF SUPERVISORS

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1 BEFORE THE BOARD OF SUPERVISORS
2 OF THE COUNTY OF FRESNO
3 STATE OF CALIFORNIA

4 ORDINANCE NO. _____

5 INTERIM URGENCY ORDINANCE NO. _____, ADOPTED ON _____,
6 2010, AS AN URGENCY MEASURE PURSUANT TO GOVERNMENT CODE SECTION
7 65858, IS HEREBY ADOPTED.

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 though 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 This Ordinance is an urgency measure to prevent a current and immediate threat to
19 the public health, safety, or welfare, adopted pursuant to Section 65858 of the Government
20 Code of the State of California, and is effective immediately and shall remain in effect for 45
21 days unless extended pursuant to California Government Code Section 65858.

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1 THE FOREGOING WAS PASSED AND ADOPTED BY THE FOLLOWING VOTE OF THE
2 BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO THIS _____ DAY OF _____
3 2010, TO-WIT:

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5 AYES:
6 NOES:
7 ABSENT:

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JUDITH G. CASE, CHAIRMAN
BOARD OF SUPERVISORS

10 ATTEST:
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13 BERNICE SIEDEL, CLERK
BOARD OF SUPERVISORS

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