



# Fresno Cannabis Association

Support and advocacy for Fresno and the Central Valley

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June 21, 2017

Honorable Council Members:

The passage of Proposition 64 in November, coupled with last week's passage of Senate Bill 94 by the Legislature, created a robust framework for state-licensed commercial cannabis activities. Prop. 64 also substantially changed state laws pertaining to the personal possession, use and cultivation of cannabis by adults 21 and older, regardless of their patient status under Proposition 215.

Any proposed changes to city ordinances must be considered with a full understanding of Prop. 64, as amended by [Senate Bill 94](#), and the resulting legislation now dubbed the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA). Because several state agencies are drafting emergency and/or permanent regulations to implement Prop. 64, the city's review should identify and address those proposed regulations that could impact state licensees operating in Fresno, if any.

The following agencies are actively engaged in rule-making:

- [Bureau of Medical Cannabis Regulation](#) (Dept. of Consumer Affairs)
- [CalCannabis Cultivation Licensing](#) (Dept. of Food and Agriculture)
- [Office of Manufactured Cannabis Safety](#) (Dept. of Public Health)
- State Board of Equalization ([cannabis tax guide](#))
- State Water Boards ([Central Valley RWQCB cannabis program](#))

Additionally, CDFA has released a draft [programmatic Environmental Impact Report](#) that discusses potential impacts and mitigations for commercial cannabis cultivation.

**Recommendation:** Due diligence requires the city to review and comment upon the proposed state regulations and the programmatic EIR, even if the city ultimately chooses not to regulate cannabis. This process can be initiated with a council consensus to provide such direction to staff.

## Personal Cultivation Ordinance - Support

This proposal would amend the city's ban on medical cannabis cultivation, Ordinance 2014-20, to align with Prop. 64. The revised ordinance would permit cultivation of six (6) cannabis plants at a private residence regardless of patient/caregiver status under Prop. 215, the Compassionate Use Act. The change is mandated because Prop. 64 bars cities and counties from banning personal cultivation.

In 2014, we opposed the adoption of Ordinance 2014-20 on multiple grounds, including the excessive fine structure and failure to comply with the California Environmental Quality Act (CEQA). Our CEQA lawsuit against the City was decided in the City's favor in 2015. We continue to support the use of fully enclosed and secure greenhouses for personal cultivation as being more energy-efficient.



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The proposed revision of Ordinance 2014-20 retains the excessive fine structure, and it is reasonable to expect any fines imposed to be subject to as-applied legal challenges. The addition of language to allow the immediate seizure of plants found in violation of the ordinance, without providing notice to abate, raises due-process concerns that also may be litigated for improper search and seizure.

Despite those serious concerns, we offer our qualified support for the proposed cultivation ordinance as being necessary to implement Prop. 64's cultivation provisions in the City of Fresno. Among other benefits, Prop. 215 patients and caretakers will now be able to lawfully cultivate medical cannabis. State and city voters may rightly take credit for this change

## Resolution of Intent – Oppose Unless Amended

This proposal would initiate a text amendment of the Zoning Ordinance to prohibit the establishment and operation of state-licensed cannabis businesses serving adults 21 and older in compliance with Prop. 64. The proposal does not address businesses serving medical cannabis patients, including dispensaries which have been banned since 2004. The apparent intent of the resolution is to draft and enact a “double ban” on both medical and adult-use cannabis businesses in the city.

First things first, **THERE IS NO JAN. 1 DEADLINE TO ENACT A “RECREATIONAL” BAN.** This misleading statement is contained in the staff report as purported justification for enacting the ban, but Tuesday's enrollment of Senate Bill 94 makes clear that no such deadline exists any more, assuming one ever did. Local governments always retain local control over commercial land uses, and all such land uses involving cannabis require both a local permit and a state license to be lawful.

Specifically, Business and Professions Code Sec. 26055(d) states: “Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.”

Further, B&P Section 26200 makes clear that local control remains intact at all times.

“26200. (a) (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

“(2) This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.”

The above statutes are not qualified or time-limited. They do not establish a January 1, 2018, deadline to enact a prohibitory or regulatory ordinance. **Any such claim is false and misleading.**



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We flatly oppose efforts to block the establishment of state-licensed cannabis businesses in Fresno. With that said, we understand that evolving cannabis laws and regulations can be difficult to grasp, especially in a city that has no prior regulatory history with medical cannabis collective-dispensaries. We therefore ask the Resolution of Intent be amended in the following manner to remove clearly false information and to allow staff to bring back for further council consideration both a prohibitory and a regulatory ordinance:

Title:

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, INITIATING A TEXT AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF FRESNO PURSUANT TO FRESNO MUNICIPAL CODE SECTION 15-5803-A(1) TO **REGULATE OR PROHIBIT RECREATIONAL MARIJUANA OPERATIONS, DISPENSARIES, SALES, COMMERCIAL CANNABIS ACTIVITIES** AND PUBLIC CONSUMPTION WITHIN THE CITY OF FRESNO.

Text:

WHEREAS, under the federal Controlled Substances Act (CSA) of 1970, marijuana is classified as a Class I substance, having a high potential for abuse and dependency; marijuana possession, distribution, cultivation, or use is a federal crime, subjecting a defendant to fines, prison time, or both; and

WHEREAS, the citizens of California, **and a majority of registered City voters who voted in the November 8, 2016, statewide general election**, recently approved Proposition 64, **the Adult Use of Marijuana Act (“AUMA”)**, which would allow, under state law, **marijuana** cannabis to be dispensed, cultivated, and used for **recreational non-medical purposes by adults 21 years of age and older**; under Prop. 64, **recreational marijuana dispensaries licensed cannabis businesses, including dispensaries**, would be allowed as of January 2018, **subject to issuance and maintenance of a local permit**, following the state’s implementation of a regulatory system; Prop. 64, however, also recognized the authority of local jurisdictions to prohibit or regulate marijuana dispensaries under local land use regulations; **Prop. 64 contradicts the CSA, and courts have determined that the CSA preempts state and local law to the contrary**; and

WHEREAS, the City Council desires to formally address **recreational marijuana operations, dispensaries, sales, commercial cannabis activities** and public consumption within the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Pursuant to Fresno Municipal Code, Section 15-5803-A(1), the Council initiates the necessary proceedings to amend the text of the City of Fresno’s Zoning Ordinance so as to formally address **recreational marijuana operations, dispensaries, sales commercial cannabis activities** and public consumption **by regulating them in commercial, manufacturing and/or industrial zone districts within the City, or by prohibiting them in all zone districts.**



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The City Council is well within its authority to request staff to bring back one or more options to regulate commercial cannabis activities to be considered at the same time as the proposed ban. We respectfully ask the council to do so for several reasons, including

**DUE DILIGENCE:** Proposition 64 was a landmark state law that is spawning new ordinances in hundreds of California cities. Beyond the obvious need to better regulate an industry that has grown exponentially in recent years, Prop. 64 clarified the authority of local governments to tax commercial cannabis activities. This offers a historic opportunity capture new sources of local tax revenue. The mayor's office and City Council have a fiduciary responsibility to examine the potential impact of a local cannabis business license tax.

**PUBLIC SAFETY:** Any proposed ban would negate any possibility of implementing Prop. 64 regulations locally, leaving medical cannabis patients, adults 21+ and everyone else at the mercy of an unregulated and often dangerous cannabis marketplace. In reality, the City has no practical ability to prevent cannabis sales from happening in the City. It does have the ability to make such activities safer. Among other concerns, the proposed ban will make the Fresno Police Department ineligible to apply for Prop. 64 grant funds specifically earmarked for local law enforcement.

**OPPORTUNITY COST:** While the City is gearing up to enact another toothless ban, hundreds of California cities and counties are actively recruiting new jobs and new industries, including state-licensed businesses and support industries. The new licensing framework encompasses cultivation, manufacturing, transportation, distribution, laboratory testing, retail storefronts and delivery services. Fresno is forfeiting its leadership position as the retail and industrial center of Central California.

**PATIENTS AND VETERANS REMAIN AT RISK:** While the proposed text amendment purports to focus only on "recreational" marijuana, it bears special note that medical cannabis dispensaries are already banned. That makes the proposed ban a "double ban," because it will permanently block safe access to dispensaries regardless of which clientele they serve. Fresno's medical cannabis patients and veterans have repeatedly implored City leaders to establish safe access to dispensaries, and at least some City officials have expressed concern for their plight. Now is the time to act on those concerns.

Under separate cover, we are submitting an online petition with more than 450 signatures asking the mayor and council to consider the needs of medical cannabis patients before acting. There is a valid debate about how and whether the City should regulate adult-use businesses. There can be no debate that Fresno's veterans and patients deserve safe access to medical dispensaries. Fresno's patients have been waiting for safe access since 1996. Refusing to serve them – again – is immoral on its face.

Sincerely,

Michael S. Green, president  
Fresno Cannabis Association