



BILL NO. B-17

ORDINANCE NO. 2014-20

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, REPEALING ARTICLE 21 OF CHAPTER 12 OF, AND ADDING ARTICLE 21 OF CHAPTER 12 TO, THE FRESNO MUNICIPAL CODE RELATING TO MARIJUANA CULTIVATION

WHEREAS, the Council hereby finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the city's jurisdiction. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes and nuisance impacts to neighboring properties from the strong and potentially noxious odors from the plants, and increased crime; and

WHEREAS, according to the Chief of Police, marijuana grows have been operating in the city for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and arrests for violation of both state and federal laws, including seizure of illegal firearms. Marijuana grows attract crime and associated violence. They are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance; and

WHEREAS, marijuana cultivation in the city poses a threat to the public peace, health and safety. Many marijuana grows have emerged in the city which are very visible to the public, and easily accessible to the public, including children and youths.



There is a threat of violent crime due to the size, location, and monetary value of these mature marijuana grows; and

WHEREAS, it is acknowledged that the voters of the State of California have provided a limited criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act in 1996 pursuant to Proposition 215 and codified as Health and Safety Code section 11362.5. The Compassionate Use Act (CUA) does not address the land use or other impacts that are caused by the cultivation of marijuana; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers. The scope of the Medical Marijuana Program Act (MMPA) commencing with Health and Safety Code section 11362.7, is also limited in that it establishes a statewide identification program and affords qualified patients, persons with identification cards and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana; and

WHEREAS, neither the CUA, MMPA, nor the California Constitution create a right to cultivate medical marijuana; and

WHEREAS, it is critical to note that neither Act abrogates the city's powers to regulate for public health, safety and welfare. Health and Safety Code 11362.5(b)(2) provides that the CUA does not supersede any legislation intended to prohibit conduct that endangers others. In addition, Health and Safety Code 11352.83 authorizes cities and counties to adopt and enforce rules and regulations consistent with the MMPA; and



WHEREAS, the Council finds that neither the CUA nor the MMPA preempts the city's exercise of its traditional police powers in enacting land use and zoning regulations, as well as legislation for preservation of public health, safety and welfare, such as this zoning ordinance prohibiting cultivation of marijuana within the city; and

WHEREAS, marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. 801, et seq., and is classified as a "Schedule I Drug" which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes. The city does not wish to be in violation of federal law; and

WHEREAS, the city has a compelling interest in protecting the public health, safety and welfare of its residents and businesses, and in preserving the peace and quiet of the neighborhoods in which marijuana is currently grown; and

WHEREAS, staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined that there is no possibility that this project may have a significant effect on the environment because the outdoor cultivation of marijuana is currently a prohibited use, and this ordinance merely prohibits additional future cultivation of marijuana indoors after the current crop year. This will not result in a substantial, or potentially substantial, adverse



change in any of the physical conditions affected by this prohibition, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Instead, the prohibition is anticipated to have positive effects on the environment, including helping to reduce water consumption and to eliminate offensive odors. Therefore, this project is not subject to CEQA.

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

SECTION 1. Article 21 of Chapter 12 of the Fresno Municipal Code is repealed.

SECTION 2. Article 21 is added to Chapter 12 of the Fresno Municipal Code to read:

#### ARTICLE 21

#### CULTIVATION OF MARIJUANA

- Section 12-2101. Purpose and Intent.
- 12-2102. Relationship to Other Laws.
- 12-2103. Definitions.
- 12-2104. Prohibition of Marijuana Cultivation.
- 12-2105. Violation and Penalty.
- 12-2106. Severability.
- 12-2107. Applicability.

SECTION 12-2101. PURPOSE AND INTENT. The purpose of this article is to prohibit the cultivation of marijuana in order to protect the public peace, health, safety and general welfare of the citizens of the city.

SECTION 12-2102. RELATIONSHIP TO OTHER LAWS. This article is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this article would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. This article shall be interpreted to be compatible and consistent with federal, county,



and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this article will supersede any other provisions of this code found to be in conflict.

SECTION 12-2103. DEFINITIONS. For purposes of this article, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning and application of words and phrases used in this article:

(a) "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

(b) "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, and includes medical marijuana.

(c) "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.

(d) "Collective, cooperative or dispensary" means a collective, cooperative, dispensary, operator, establishment, provider, association or similar entity that cultivates, distributes, delivers or processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the Compassionate Use Act and Medical Marijuana Program Act.

(e) "Primary caregiver" means a primary caregiver as defined in Health and Safety Code section 11362.7.



(f) "Qualified patient" means a qualified patient as defined in Health and Safety Code section 11362.7.

SECTION 12-2104. PROHIBITION OF MARIJUANA CULTIVATION.

Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city.

SECTION 12-2105. VIOLATION AND PENALTY.

(a) A violation of this article shall be prosecuted by the City Attorney through the civil enforcement process, including injunctive relief, as set forth in Section 1-308 of this code. Each day a person is in violation of this article shall be considered a separate violation.

(b) The administrative citation penalty for each and every marijuana plant cultivated in violation of this article shall be One Thousand Dollars (\$1,000) per plant, plus One Hundred Dollars (\$100) per plant per day the plant remains unabated past the abatement deadline set forth in the administrative citation.

(c) Any property upon which a violation of this article is found shall be subject to immediate abatement by the city.

(d) In addition to any administrative penalty assessed for violation of this article, any person found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, calculated to recover the total costs incurred by the city in enforcing this article.



SECTION 12-2106. SEVERABILITY. If any section, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this article. The Council hereby declares that it would have passed this ordinance and adopted this article and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 12-2107. APPLICABILITY. All of the provisions of this article shall be immediately enforceable as to the outdoor cultivation of marijuana. Any person legally cultivating marijuana indoors prior to the effective date of this article shall have one hundred twenty (120) days from the effective date of this article to harvest their crop of marijuana. After the one hundred twenty day (120) grace period, all the provisions of this article shall be immediately enforceable.

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SECTION 3. This Ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA )
COUNTY OF FRESNO ) ss.
CITY OF FRESNO )

I, YVONNE SPENCE, 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 27th day of March, 2014.

AYES : Baines, Brand, Caprioglio, Quintero, Xiong, Brandau
NOES : Olivier
ABSENT : None
ABSTAIN : None

Mayor Approval: N/A, 2014
Mayor Approval/No Return: April 8, 2014
Mayor Veto: N/A, 2014
Council Override Vote: N/A, 2014

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: Katherine B. Doerr
Supervising Deputy
Date: 4/10/14

KBD:elb [63853elb/kbd] Ord. 1/30/14



March 27, 2014

Council Adoption: 3/27/2014  
Mayor Approval:  
Mayor Veto:  
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC *Ys*  
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 3/27/14, Council adopted the attached Ordinance No. 2014-20 entitled **Repealing Article 21 of Chapter 12 prohibiting cultivation of marijuana in all zone districts within the City**, Item No. 1E2, by the following vote:

Ayes : Baines, Brand, Brandau, Caprioglio, Quintero, Xiong  
Noes : Olivier  
Absent : None  
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before April 7, 2014. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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**APPROVED** NO RETURN: 4/8/14

**VETOED** for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

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\_\_\_\_\_  
Ashley Swearengin, Mayor

Date: \_\_\_\_\_

**COUNCIL OVERRIDE ACTION:**

Date: \_\_\_\_\_

Ayes :  
Noes :  
Absent :  
Abstain :