Agenda Item 6

DATE: July 12, 2011

TO: Board of Supervisors

FROM: Alan Weaver, Director
Department of Public Works and Planning

Margaret Mims, Sheriff

SUBJECT: Medical Marijuana Ordinance

RECOMMENDED ACTION:

Conduct first hearing on proposal to add Chapter 6.6 to Title 6, Business License and Regulations, and Chapter 11 to Title 10, Public Peace, Morals and Welfare to the Fresno County Ordinance Code thereby adopting regulations relating to possession, consumption, distribution, and cultivation of medical marijuana. Set second hearing for August 9, 2011, and waive reading in its entirety.

Staff recommends approval of the proposed Medical Marijuana Ordinance that is intended to address possession, consumption, distribution, and cultivation of medical marijuana in the unincorporated areas of Fresno County. The proposed Ordinance also reflects the direction provided to staff at your Board's December 7, 2010 Board hearing regarding prohibiting medical marijuana dispensaries in the unincorporated areas of Fresno County.

ALTERNATIVE ACTION:

Your Board may determine to modify or deny the proposed Ordinance Code Amendments.

FISCAL IMPACT:

Preparation of the proposed Medical Marijuana Ordinance is a net County cost, which is being absorbed within the Department's existing budget in Org. No. 43600200. This cost will, however, defer and/or displace other current overall workload activities budgeted in this account.

ADMINISTRATIVE OFFICE REVIEW Brandi Orth

BOARD ACTION: DATE July 12, 2011 APPROVED AS RECOMMENDED X OTHER

Official Action of Board of Supervisors

Deputy

UNANIMOUS ____ ANDERSON Absent CASE Aye LARSON Aye PEREA Aye POOCHIGIAN Aye

FC-017 (eForms-0904)

IMPACTS ON JOB CREATION:

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

BACKGROUND/DISCUSSION:

On July 13, 2010, your Board considered and adopted an Interim Urgency Ordinance prohibiting the establishment of new Medical Marijuana Collective Dispensaries in the unincorporated areas of Fresno County pending completion of a Zoning Ordinance Text Amendment initiated on the same day. On September 14, 2010, your Board extended said Interim Urgency Ordinance and it remains in effect until July 13, 2012, unless earlier terminated.

On September 14, 2010, your Board considered and adopted an Interim Urgency Ordinance prohibiting the outdoor cultivation of medical marijuana collectives in all zone districts in the unincorporated areas of Fresno County pending completion of the development of standards intended to regulate such activity. On October 26, 2010, your Board extended said Interim Urgency Ordinance and it remains in effect until September 14, 2011, unless earlier terminated.

On December 7, 2011, your Board considered and provided direction to staff regarding regulating Medical Marijuana Dispensaries in the unincorporated areas of Fresno County. Your Board considered testimony from Department's and Sheriff's Office staff, and from the public both in support and opposition to dispensaries. At the conclusion of the hearing, your Board directed staff to proceed with the preparation of the Medical Marijuana Ordinance prohibiting Medical Marijuana Dispensaries.

On February 2, 2011, your Board received a presentation from the Sheriff's Office on issues related to marijuana criminal investigations on Federal land and on large marijuana groves in Fresno County. Your Board received the presentation but took no formal action.

Based on your Board's action and direction, the County Administrative Officer's (CAO) Office convened taskforce meetings with staff representatives from the Sheriff's Office, Agriculture Department, Department of Public Health, Auditor-Controller/Treasurer-Tax Collector and Department of Public Works and Planning to initiate and prepare a comprehensive draft Medical Marijuana Ordinance that addresses consumption, cultivation, and distribution of medical marijuana in Fresno County. Today's Agenda Item represents the efforts of the taskforce committee.

In addition, staff has scheduled July 21, 2011, for the Planning Commission to consider Amendment to Text Application No. 364 (initiated by your Board on July 13, 2010), relating to the location of Medical Marijuana Cultivation Facilities in the County's Industrial (M-1, M-2 and M-3) Zoning Districts. The amendment to the Zoning Ordinance will be considered by your Board on August 9, 2011, along with the second reading of the proposed County Ordinance Code amendments addressed in this Agenda Item.

As part of preparation of the proposed Medical Marijuana Ordinance, staff surveyed each of the 15 cities in Fresno County and reports the following relating to actions that each city has taken relative to medical marijuana as follows:

- Fresno – Adopted Ordinance banning dispensaries
- Clovis – Adopted Ordinance banning dispensaries
- Sanger – Adopted Ordinance banning dispensaries
- Reedley - Adopted Ordinance banning dispensaries
- Orange Cove - Adopted Ordinance banning dispensaries
- Parlier - Adopted Ordinance banning dispensaries
- Kingsburg – Adopted Ordinance prohibiting dispensaries
- Fowler – Adopted Ordinance banning dispensaries
- Selma - Adopted Interim Urgency Ordinance prohibiting dispensaries
- Kerman - Adopted Ordinance banning dispensaries
- San Joaquin – Adopted Interim Urgency Ordinance banning dispensaries
- Firebaugh - Adopted Ordinance banning dispensaries
- Mendota – No action taken
- Huron – Information unavailable (staff was unable to confirm at the time this Agenda Item was drafted whether the city has taken any action)
- Coalinga - Adopted Ordinance banning dispensaries

Proposed Medical Marijuana Ordinance Summary:

Below is a summary of the proposed Medical Marijuana Ordinance.

Possession and Consumption:

No on-site consumption of medical marijuana shall occur except by qualified patients who live on the property as their principal place of residence.

Distribution:

Medical Marijuana Dispensaries are prohibited in Fresno County.

Cultivation:

- Cultivation of medical marijuana may only occur pursuant to the issuance of a valid Medical Marijuana Cultivation Business License from Fresno County; and
- Cultivation shall only occur within a secure, locked, and fully enclosed structure, including a ceiling, roof or top; and
- Cultivation shall be limited to the County's Industrial Zoning Districts (M-1, M-2, and M-3); and
- Proposed cultivation sites shall meet location criteria (minimum of 1,000 feet from any school, public park or playground, recreation area, amusement park, sports facility, adult business, day care facility, church, chapel, youth-orientated establishment, places of worship or other Medical Marijuana Cultivation Facility); and
- The maximum number of medical marijuana plants shall not exceed 99; and
- Cultivation facilities shall provide specific security improvements (all windows, roofs, roof hatches, sky lights, ceilings, entrances, exits and doors shall be secured, require that alarms and closed circuit televisions be present on-site, require uniformed security guard present at all times during hours of operation); and
- Hours of operation shall be limited from 8:00 a.m. to 8:00 p.m. daily; and
- Prohibit Medical Marijuana Collective Dispensary operations from possessing a license from the State Department of Alcohol Beverage Control or an Adult Business License.

Enforcement:

The Sheriff's Office, with administrative assistance from Public Works and Planning, will have primary responsibility for enforcement of the proposed Medical Marijuana Ordinance.

Adoption of the proposed Medical Marijuana Ordinance is found to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3). The County finds that the adoption of this Ordinance does not have the potential for causing a significant adverse effect on the environment.

OTHER REVIEWING AGENCIES:

Copies of this Agenda Item were provided to the Sheriff's Office, Agriculture Department, Department of Public Health, and the Auditor-Controller/Treasurer-Tax Collector's Office.

REFERENCE MATERIAL

BAI #13, July 13, 2010

BAI #9, August 24, 2010

BAI #6, September 14, 2010

BAI #12, October 26, 2010

BAI #9, December 7, 2010

BAI #4, February 1, 2011

BEFORE THE BOARD OF SUPERVISORS

OF THE COUNTY OF FRESNO

STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ORDINANCE CODE OF THE COUNTY OF FRESNO BY ADDING CHAPTER 10.60 TO TITLE 10 – PUBLIC PEACE, MORALS AND WELFARE AND CHAPTER 6.6 TO TITLE 6 – BUSINESS LICENSES AND REGULATIONS, THEREOF ADOPTING REGULATIONS RELATING TO POSSESSION, CONSUMPTION, DISTRIBUTION, AND CULTIVATION OF MARIJUANA.

The Board of Supervisors (herein referred to as Board) of the County of Fresno ordains as follows:

SECTION 1: The Fresno County Board of Supervisors finds:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5, and entitled "The Compassionate Use Act of 1996"). The intent of the Proposition was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The Proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purpose."

B. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code Sections 11352.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.

C. The Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq., classifies marijuana 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 use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or posses with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation or possession of marijuana for medical purposes.

D. Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation or premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Fresno County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive civil regulation of premises used for marijuana cultivation and dispensation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation and dispensation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

E. In many communities in which so-called medical marijuana "dispensaries" have been established, law enforcement agencies have documented the serious and adverse impacts associated with such dispensaries. These communities and the media have reported increased crime, including burglaries, robberies, violence, illegal sales of marijuana to and use of marijuana by minors and others without medical need in the areas immediately surrounding such medical marijuana dispensaries. Other negative secondary effects include the smoking of marijuana in public areas and adverse impacts on neighboring businesses (including odor complaints). The County of Fresno could reasonably anticipate experiencing similar adverse impacts and effects from any marijuana dispensaries established in the unincorporated County.

F. Additionally, a number of sources, including the United States Department of Justice's California Medical Marijuana website [which contains various documents and reports related to issues surrounding marijuana use (http://www.usdoj.gov/dea/ongoing/legalization.html) and the "White Paper on Marijuana Dispensaries" published by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009)], have concluded that the establishment of marijuana dispensaries can lead to an increase in crime. Among the crimes citied as typical examples are burglaries, robberies, sales of illegal drugs in the areas immediately surrounding such dispensaries, as well as other public nuisances such as loitering, smoking marijuana in public places, sales to minors and driving while under the influence of marijuana. The Board of Supervisors finds that these data and conclusions justify the implementation of the regulatory and safety measures included in this Ordinance.

G. Additionally there have been many reports of violence incidental to the outdoor cultivation of marijuana, whether medical or non-medical. There have been reports of at least two shootings within Fresno County related to marijuana. One of the two shootings resulted in death. The reports of marijuana related threats to neighboring landowners and other citizens have escalated in recent months. There have also been many complaints from neighbors regarding the unpleasant odor from the outdoor cultivation of marijuana. Additionally, the strong smell of marijuana may create an attractive nuisance, alerting persons to the location of the valuable plants and creating a risk of burglary, robbery and armed robbery. The outdoor cultivation of marijuana poses a current and immediate threat to public health, safety and welfare.

H. Fresno County is within a High Intensity Drug Trafficking Area, as designated by the White House Office of National Drug Control Policy. Marijuana cultivation continues to be a serious problem within Fresno County. The County has received Federal grants for the eradication of marijuana grown on public lands.

I. Medical marijuana and non-medical marijuana are indistinguishable when on the marijuana plant.

J. Nothing in this Ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this Ordinance shall be deemed a defense or immunity to any action brought against any person by the Fresno County District Attorney, the Attorney General of the State of California, or the United State of America.

K. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3).

SECTION 2: The Ordinance Code of the County of Fresno is hereby amended by adding Chapter 10.60 to Title 10, including Sections 10.60.010 through 10.60.070 to read in its entirety as follows:

"XI. MEDICAL MARIJUANA

10.60.010 DEFINITIONS:

For purposes of this Chapter and Chapter 6.60, the following definitions shall apply:

A. **"Cultivation"** is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.

B. **"Marijuana"** has the same meaning as defined by Health and Safety Code Section 11018.

C. **"Medical marijuana"** is defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq.

D. "Medical marijuana dispensary" or **"dispensary"** means any facility or location, whether fixed or mobile, where medical marijuana or items containing medical marijuana (e.g. food or drink products) is made available to, and/or exchanged with, and/or distributed or sold to four or more qualified patients, persons with an identification card, or primary caregivers. Unless otherwise regulated by this code or applicable law, "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness

licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

E. **"Medical marijuana cultivation facility"** means any location at which a qualified patient, person with an identification card, or primary caregiver cultivates marijuana for medical purposes.

F. **"Person with an identification card"** shall have the same meaning set forth in Health and Safety Code Section 11362.7.

G. **"Primary caregiver"** shall have the same meaning set forth in Health and Safety Code Section 11362.7.

H. **"Qualified patient"** shall have the same meaning set forth in Health and Safety Code Section 11362.7.

10.60.020 REGULATIONS APPLICABLE TO THE CONSUMPTION OF MEDICAL MARIJUANA:

No on-site consumption of medical marijuana shall occur except by a qualified patient or person with an identification card who lives on the property as their principal place of residence.

10.60.030 MEDICAL MARIJUANA DISPENSARY AS A PROHIBITED USE:

A. A medical marijuana dispensary as defined in Section 11.10.020 is a prohibited use in all zone districts in the County of Fresno.

10.60.040 CULTIVATION OF MEDICAL MARIJUANA:

The cultivation of marijuana plants in the unincorporated area of Fresno County is unlawful and hereby declared to be a public nuisance that may be abated in accordance with this Chapter unless the cultivation is pursuant to a valid medical marijuana cultivation business license ("hereinafter referred to as "business license") issued by the Treasurer-Tax Collector pursuant to the provisions of Title 6, Chapter 6.60.10. No person owning, leasing, occupying, or having charge or possession of any premises within the unincorporated area of Fresno County

shall cause, allow, suffer, or permit such premises to be used for the cultivation of marijuana plants in violation of this Chapter.

10.60.050 AMORTIZATION OF NON-CONFORMING MEDICAL MARIJUANA DISPENSARY:

Any marijuana dispensary existing on the effective date of this Ordinance, which does not conform to the provisions of this Chapter, shall be regarded as a non-conforming use which may be continued until six months after the effective date of this Ordinance. On or before such date, all such non-conforming uses shall be terminated.

10.60.060 VIOLATION AND ENFORCEMENT:

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by Title 1, Chapter 1.13 of this Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, revocation of the medical marijuana cultivation business license, revocation of the certificate of occupancy for the location, disgorgement and payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The County may also pursue any and all remedies and actions available and applicable under local and state laws for any violations of this Chapter.

The Fresno County Sheriff's Office, with administrative assistance from the Department of Public Works and Planning, shall have primary responsibility for enforcement of the provisions of this Chapter.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Fresno any duty to issue any notice to abate, nor to abate, nor to take any other action with regard to any marijuana dispensary in violation of this Chapter, and neither the enforcing officer nor the County of Fresno shall be held liable for failure to issue an order to abate, nor for failure to abate, nor for failure to take any other action with regard to any marijuana dispensary in violation of this Chapter.

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10.60.080 SEVERABILITY:

If any part of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter."

SECTION 3: The Ordinance Code of the County of Fresno is hereby amended by adding Chapter 6.60 to Title 6, including Sections 6.60.010 through 6.60.100, to read in its entirety as follows:

"TITLE 6, CHAPTER 6.60 – BUSINESS LICENSES AND REGULATIONS

6.60.010 GENERAL BUSINESS LICENSE REGULATIONS:

The definitions set forth in Title 10, Chapter 10.60.010 shall apply to this Chapter. The provisions of Chapter 6.04 are not applicable to medical marijuana cultivation business licenses issued pursuant to this Chapter 6.60.

The cultivation of marijuana plants in the unincorporated area of Fresno County is unlawful and deemed a public nuisance unless the cultivation is pursuant to a valid medical marijuana cultivation business license issued by the Treasurer-Tax Collector pursuant to the provisions of this Chapter.

6.60.020 MEDICAL MARIJUANA CULTIVATION BUSINESS LICENSE – CONTENTS OF APPLICATION:

A. Written application for a license under this Chapter shall be made to the Treasurer-Tax Collector of the County, on forms acceptable to the Treasure-Tax Collector, accompanied by a non-refundable fee as specified in Section 3001 of the Master Schedule of Fees, Charges and Costs Recovery. Fees or costs incidental to the filing of a complete application, and/or associated with the mandatory Site Plan Review Application, and/or to meet other provisions of this Chapter are not included in the application fee. The application shall be signed by the applicant or applicants. The application shall include the following:

1. The name, address and telephone number for the applicant. The applicant must be a qualified patient, a person with an identification card or a primary caregiver; and

2. The name of each qualified patient, person with an identification card, or primary caregiver who will participate with the licensee in the cultivation of marijuana, either directly or by providing reimbursement for marijuana cultivated pursuant to the business license (hereinafter referred to as "cultivation participants"); and

3. A copy of the current medical recommendation or state-issued medical marijuana card for the applicant and cultivation participants; and

4. A statement, signed by the applicant and all cultivation participants, that they acknowledge that they may be subject to prosecution under federal or state laws; and

5. An agreement, signed by the applicant and all cultivation participants, to waive, release, indemnify and defend the County from any and all legal liability related to or arising from the application for a license, the issuance of the license, or the enforcement of the conditions of the license, and/or the operation of any facility at which medical marijuana is cultivated; and

6. The address of the real property upon which the medical marijuana will be cultivated, a description of the nature of the proposed use or development, and an explanation of how the proposed business will satisfy the applicable requirements set forth in Sections 6.60.070 and 6.60.080 of this Chapter; and

7. The notarized signature of all property owners of the proposed site indicating the owners' consent to the application and acknowledgement that the property owner may be subject to prosecution under federal or state laws; and

8. The fee prescribed by the Board by ordinance or resolution for processing the application; and

9. Such other information and documentation as the County determines is necessary to ensure compliance with state law and this Chapter.

B. The applicant and cultivation participants must be fingerprinted and photographed by the Sheriff's Office at the applicant's expense.

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6.60.030 MEDICAL MARIJUANA CULTIVATION BUSINESS LICENSE – REVIEW AND APPROVAL; APPEAL FROM DENIAL:

A. License applications shall be processed by the Treasurer-Tax Collector with investigation and reports by the Department of Public Works and Planning in the form of a Site Plan Review Application and the Sheriff's Office in accordance with this Chapter. Such reports shall be submitted to the Treasurer-Tax Collector not later than 90 working days from the date of distribution of the application.

In considering an application for a license pursuant to this Chapter, the Treasurer-Tax Collector shall issue the license only upon the Department of Public Works and Planning and/or the Sheriff's Office finding the following:

1. The medical marijuana cultivation facility is consistent with the infrastructure requirements contained in this Chapter; and

2. The medical marijuana cultivation facility is located in any of the following Zoning Districts: M-1, M-2, and M-3; and

3. The medical marijuana cultivation facility is consistent with the following location requirements:

a. The medical marijuana cultivation facility shall be a minimum of 1,000 feet from any school, public park or playground, recreation area, amusement park, sports facility, adult business, day care facility, church, chapel, youth-orientated establishment, places of worship or other medical marijuana cultivation facility; and

4. The Department of Public Works and Planning has approved a Site Plan Review Application; and

5. The Sheriff's Office has certified that neither the medical marijuana cultivation applicant nor the cultivation participants have been convicted of a felony within the past ten years.

B. In the event the report of the Department of Public Works and Planning and/or the Sheriff's Department is adverse to the issuance of the license, the Treasurer-Tax Collector shall not issue the license. The Treasurer-Tax Collector's decision to approve or deny a license shall

be final. There shall be no appeal to the County Planning Commission or the Board of Supervisors.

C. The applicant may seek judicial review of the Treasurer-Tax Collector's denial of an application as provided by the California Code of Civil Procedure Section 1094.5 or its successor.

6.60.040 LICENSE TRANSFER PROHIBITED:

A licensee shall not transfer ownership or control of a medical marijuana cultivation business license to any other person or entity. All changes in ownership shall require a new license application and approval.

6.60.050 TERM AND RENEWAL OF MEDICAL MARIJUANA LICENSE:

Each medical marijuana cultivation business license under this Chapter shall be issued to expire on June 13th, provided that no license shall be issued to expire more than one year from the date of issuance. When a license is issued during any licensing period, the Treasurer-Tax Collector shall pro-rate the license fee as of the first of the month nearest to the date of issuance.

A license may be renewed only upon the licensee filing with the Treasurer-Tax Collector a written request for renewal accompanied by a new application, copy of the license to be renewed and the applicable fee. The request for renewal shall be made at least 60 working days before the expiration date of the license. When made less than 60 days before the expiration date, the expiration of the license shall not be stayed.

6.60.060 INFRASTRUCTURE REQUIREMENTS FOR MEDICAL MARIJUANA CULTIVATION FACILITIES:

The cultivation of medical marijuana within the County of Fresno shall at all times occur within a secure, locked, and fully enclosed structure, including a ceiling, roof or top, and shall meet the following requirements:

A. The exterior appearance of the structure shall be compatible with the exterior appearance of structures already constructed or under construction within the immediate area,

and shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area.

B. Alarms, Closed Circuit Television

1. A Sheriff-approved 24-hour centrally monitored alarm system is required.

2. Closed Circuit Television (CCTV) video monitoring shall be installed that meets the following criteria:

a. Continuous 24-hour operation and recording with minimum archival period of 14 days.

b. Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in interior and exterior areas where marijuana is present at any time.

c. Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in the immediate exterior areas of doors, windows or other avenues of potential access.

d. All CCTV recordings shall be accessible to law enforcement officers at all times during operating hours and otherwise upon reasonable request. All CCTV recording systems shall have the capability of producing tapes, DVDs or other removable media of recordings made by the CCTV system.

e. To prevent tampering, the recorder shall be kept in a secure location and all recordings shall be date and time stamped.

C. Windows

1. Windows and glass panes shall have vandal-resistant glazing, shatter-resistant film, glass block, or bars installed equipped with latches that may be released quickly from the inside to allow exit in the event of emergency.

2. Windows vulnerable to intrusion by a vehicle must be protected by bollards or landscaping grade separation reasonably sufficient to prevent such intrusion.

D. Roofs, roof hatches, skylights, ceilings

For buildings in which a cultivation facility is located:

1. All means of gaining unauthorized access to the roof shall be eliminated. Exterior roof ladders shall be secured with locked ladder covers.

2. Roof hatches and skylights shall be secured so as to prevent intrusion.

3. Where a cultivation facility is located in a building with other tenants, the cultivation facility shall be secured against unauthorized access from other tenant spaces or common areas, including access through crawl spaces, ceiling spaces, ventilation systems or other access points concealed from the common areas.

E. Visibility

1. No marijuana may be visible from any location off the property on which a cultivation facility is located.

2. Exterior landscaping within ten feet of any building in which a cultivation facility is located shall be free of locations which could reasonably be considered places where a person could conceal themselves considering natural or artificial illumination.

3. Exterior building lighting and parking area lighting must be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on-site at a distance of no less than 40 feet.

F. Fire suppression system

An approved automatic fire sprinkler system, designed in compliance with NFPA 13, shall be provided in buildings and portions thereof used as a cultivation facility.

G. Entrances, exits, doors

1. A cultivation facility shall have a single, plainly identified primary entrance/exit site that is visible from public or common areas.

2. Any exit or entrance that is not visible from a public or common area shall be plainly marked as an emergency exit only. Such emergency exits shall be self-closing, self-locking, equipped with an alarm and not used except in an emergency.

3. Any aluminum door shall be fitted with steel inserts at the lock receptacles.

4. Any outward opening doors shall be fitted with hinge stud kits, welded hinges or set-screw hinge pins.

5. Panic exit hardware shall be "push-bar" design.

6. Double doors shall be fitted with three-point locking hardware and push-bars consistent with fire agency regulations or requirements.

7. All emergency exits shall be solid core doors featuring hinge-pin removable deterrence. Emergency exit doors shall have latch guards at least 12 inches in length protecting the locking bolt area. Latch guards shall be of minimum 0.125-inch thick steel, affixed to the exterior of the door with non-removable bolts, and attached so as to cover the gap between the door and the doorjamb for a minimum of six inches both above and below the area of the latch.

8. All glass doors or doors with glass panes shall have shatter-resistant film affixed to prevent glass breakage.

6.60.070 OPERATING REQUIREMENTS FOR CULTIVATION FACILITIES:

A. The hours of operation of a cultivation facility shall be no earlier than 8 a.m. and no later than 8 p.m., seven days a week.

B. No persons under the age of 18 are allowed at, in, or on a cultivation facility, unless such individual is a qualified patient and accompanied by their parent or documented legal guardian.

C. The licensee and each cultivation participant shall be limited to cultivation of medical marijuana at one cultivation facility at any one time.

D. The following records must be maintained at the cultivation facility at all times and available for inspection by the Sheriff's Office:

1. A record identifying the name of the licensee and each cultivation participant, as well as the name of the physician providing the recommendation for medical marijuana for each person and shall reflect whether the recommendation is written or oral. The record shall identify the city and county of residence for the licensee and each cultivation participant.

2. Current records of any transaction by which a cultivation participant pays money for marijuana from the cultivation facility during the two-year period preceding the current date. Such records must include at a minimum the following information:

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a. The name of the cultivation participant that paid money;

b. The amount of cash involved, if any;

c. The method of payment if not by cash; and

d. The amount of marijuana involved.

3. An agreement, signed by the licensee and every cultivation participant, that:

a. Within seven days of request by the Sheriff's Office, they will produce for inspection by law enforcement a record, current to within 48 hours, of costs of cultivation, overhead and operating expenses; and

4. A record showing the identification of the licensee and every cultivation participant by name, home address and telephone number.

E. The total quantity of marijuana grown or located at any cultivation facility shall not exceed 99 marijuana plants, whether mature or immature.

F. No smoking or any other consumption or ingestion of marijuana is allowed at a cultivation facility.

G. Cultivation facilities shall be available for inspection by the Sheriff, the Director of the Department of Public Works and Planning, the fire authority having jurisdiction or their respective authorized representatives, at all times during operating hours and upon reasonable notice during non-operating hours.

H. A cultivation facility shall have on its premises, posted in a prominent location, a copy of its business license and a document that provides the names, home addresses, home telephone numbers and 24-hour emergency telephone numbers of its licensee and every cultivation participant.

I. A licensed, uniformed security guard shall be present at a cultivation facility at all times during hours of operation.

J. The licensee shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

K. The licensee shall not hold or maintain a business license from the County of Fresno to operate an adult business pursuant to the provisions of Title 6, Chapter 6.33.

6.60.080 FACILITY LIMITS, NAMING:

A. A cultivation facility must have a unique identifying name, identified on the medical marijuana business license application, for purposes of tracking membership and facilities.

6.60.090 VIOLATION AND ENFORCEMENT:

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by Title 1, Chapter 1.13 of this Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, revocation of the medical marijuana cultivation business license, revocation of the certificate of occupancy for the location, disgorgement and payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The County may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the licensee and the cultivation participants.

The Fresno County Sheriff's Office, with administrative assistance from the Department of Public Works and Planning, shall have primary responsibility for enforcement of the provisions of this Chapter.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Fresno any duty to issue any notice to abate, nor to abate, nor to take any other action with regard to any marijuana cultivation in violation of this Chapter, and neither the enforcing officer nor the County of Fresno shall be held liable for failure to issue an order to abate, nor for failure to abate, nor for failure to take any other action with regard to any marijuana cultivation in violation of this Chapter.

6.60.100 SEVERABILITY:

If any part of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter."

SECTION 4: This Ordinance shall take effect and be in force thirty (30) days from and after its passage. Upon the effective date of this Ordinance, Interim Urgency Ordinance Nos. 10-014 and 10-019 shall expire and become null and void.

THE FOREGOING WAS PASSED AND ADOPTED BY THE FOLLOWING VOTE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO THIS _____ DAY OF _____ 2011, TO-WIT:

AYES:

NOES:

ABSENT:

_____
CHAIRMAN
BOARD OF SUPERVISORS

ATTEST:

_____
BERNICE SIEDEL, CLERK
BOARD OF SUPERVISORS