



BILL NO. B-5

ORDINANCE NO. 2012-3

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, EXTENDING ORDINANCE NO. 2011-41, RELATING TO PLACING A MORATORIUM ON OUTDOOR CULTIVATION OF MEDICAL MARIJUANA IN THE CITY OF FRESNO PURSUANT TO GOVERNMENT CODE SECTION 65858 PENDING THE DEVELOPMENT OF STANDARDS AND REGULATIONS RELATING TO CULTIVATION AND DISPENSING AS A NEW LAND USE STANDARD.

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, et seq., and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, California Health and Safety Code Section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, the City of Fresno is the fifth largest City in California and has a substantial percentage of non-owner occupied rental properties and vacant foreclosures. The numerous rental properties and foreclosures have attracted unauthorized marijuana cultivation activities resulting in damage to these properties.

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Ordinance Re Enactment of Urgency Prohibition on Marijuana Cultivation in the City of Fresno Pending Development of Standards and Regulations

Adopted _____
Approved _____
Effective _____

2012-3



WHEREAS, The City of Fresno Police Department, City residents and other public entities have reported adverse impacts from the outdoor cultivation of medical marijuana within the City, including offensive odors, increased risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes; and

WHEREAS, the strong odor of marijuana plants, which increases as the plants mature, is offensive to many individuals and creates an attractive nuisance, alerting people to the location of valuable marijuana plants and creating an increased risk of crime; and

WHEREAS; children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children such as schools, parks, and similar locations; and

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City to modify the City of Fresno Municipal Code by adding regulations pertaining to the cultivation of medical marijuana within the City; and

WHEREAS, it is the Council's intention that nothing in this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, by permitting, or otherwise allowing, any activity which is lawfully and constitutionally prohibited under the Act.

WHEREAS, Mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this Chapter shall be construed, in any way, to expand the rights of anyone to use or possess



marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal; and

WHEREAS, the City Council adopted Interim Urgency Ordinance No. 2011-41 which placed a moratorium on the outdoor cultivation of medical marijuana because there was a current and immediate threat to the public's health and welfare, and the approval of additional entitlements for the land use would result in the threat to the public health, safety and welfare; and;

WHEREAS, Ordinance No. 2011-41 is effective for only 45 days; and

WHEREAS, without an extension, there is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Cultivation of medical marijuana requires careful consideration and regulations to the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses; and

WHEREAS, extending Ordinance No. 2011-41 will allow the City time to research, draft and adopt a more permanent regulation regarding outdoor cultivation of medical marijuana; and

WHEREAS, Government Code section 65858 allows an extension of Ordinance No. 2011-41 for an additional 10 months and 15 days if proper notice is given under Government Code section 65090, and the Council again finds that there is a current and immediate threat to the public's health or welfare, and the approval of additional entitlements for the land use would result in the threat to the public health, safety and welfare, and adopts the extension ordinance by a four-fifths vote; and



WHEREAS, this Ordinance complies with the applicable state law, as well as imposes reasonable rules and regulations protecting public health, safety, and the welfare of the residents and businesses within the incorporated area of the City of Fresno.

WHEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. EXTENSION OF ORDINANCE. Ordinance No. 2011-41 is hereby extended for an additional 10 months and 15 days, unless terminated earlier.

SECTION 2. PUBLIC THREAT TO HEALTH, SAFETY AND WELFARE. The Council finds that extending Ordinance 2011-41 is necessary because there is an immediate threat to the public's health and safety, and the approval of additional entitlements would result in the threat to the public's health, safety and welfare. By adopting this urgency ordinance, it will allow the City to research, draft and adopt a more permanent regulation of outdoor medical marijuana cultivation.

SECTION 3. CEQA EXEMPTION. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines section 15061(b)(3).

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.



SECTION 5. EFFECTIVENESS. This extension of Interim Urgency Ordinance No. 2011-41 is hereby adopted to protect the public health, safety and welfare and is adopted as an urgency measure pursuant to the provision of Government Code section 65858 and shall become effective and in full force upon adoption.

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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 26th day of January, 2012.

AYES: Baines, Borgeas, Brand, Quintero, Westerlund, Xiong
NOES: Olivier
ABSENT: None
ABSTAIN: None

Mayor Approval: _____ N/A _____, 2012
Mayor Approval/No Return: _____ N/A _____, 2012
Mayor Veto: _____ N/A _____, 2012
Council Override Vote: _____ N/A _____, 2012

YVONNE SPENCE, CMC
City Clerk

BY: *Yvonne Spence*
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: *Michael D. Flores*
Michael D. Flores, Deputy

MDF:ns [57706ns/ord]