



## REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.

COUNCIL MEETING 4/24/07

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

April 24, 2007

**FROM:** JAMES C. SANCHEZ  
City Attorney

**BY:** KATHRYN C. PHELAN, Deputy City Attorney  
City Attorney's Office

**SUBJECT:** ORDINANCE ADDING SUBSECTION 12-306-N-56 TO THE FRESNO MUNICIPAL CODE PROVIDING DEFINITIONS AND STANDARDS FOR MEDICAL MARIJUANA DISPENSARIES AND COOPERATIVES

**RECOMMENDATIONS**

It is recommended that the attached ordinance be introduced and adopted by Council

**EXECUTIVE SUMMARY**

On August 29, 2006, Council adopted the attached Proposed Ordinance (Attachment "A"). Subsequently, it was determined that an error in adoption was made under the procedures to amend the Zoning Ordinance (Fresno Municipal Code, Chapter 12, Articles 1-4.5). Specifically, the Proposed Ordinance was not routed to the Fresno County Airport Land Use Commission ("ALUC") and was not considered by the Planning Commission. The present process of rerouting the Proposed Ordinance for review and consideration to the ALUC, the Planning Commission, and Council is intended to correct that error.

On February 5, 2007, the ALUC considered the Proposed Ordinance and found that it was consistent with their adopted plans. On April 4, 2007, the Planning Commission considered the Proposed Ordinance and recommended its adoption. (See Attached Planning Commission Resolution, Attachment "C".) The Proposed Ordinance is now before Council for its reconsideration and adoption.

Attached is the Original staff report that went to Council on August 29, 2006, (Attachment "B") which contains the substantive information and recommendation regarding the Proposed Ordinance.

**FISCAL IMPACT**

No anticipated fiscal impact.

Attachment: Exhibit A Proposed Ordinance  
Exhibit B August 29, 2006 Report to Council with Adopted Ordinance  
Exhibit C Planning Commission Resolution

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO  
PROPOSED AND INITIATED BY \_\_\_\_\_  
MOVED BY \_\_\_\_\_ SECONDED BY \_\_\_\_\_

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA  
ADDING SUBSECTION 12-306-N-56 OF THE FRESNO  
MUNICIPAL CODE, RELATING TO PROVIDING DEFINITIONS  
AND STANDARDS FOR MEDICAL MARIJUANA

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

SECTION 1. Section 12-306-N of the Fresno Municipal Code is amended by adding subsection 56. thereto to read:

[56. Medical Marijuana is defined as set forth in California Health and Safety Code section 11362.5 et seq.

a. A “Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code section 11362.5 et seq. Unless otherwise regulated by this Code or applicable law, a “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 illnesses 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.

b. A “Medical Marijuana Cooperative” involves two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or giving away medical marijuana.

c. A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed only in a zone district designated for medical offices and only if consistent with state and federal law.]

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SECTION 2. 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.

\* \* \* \* \*

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

I, REBECCA E. KLISCH, 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 \_\_\_ day of \_\_\_\_\_, 2007.

AYES :  
NOES :  
ABSENT :  
ABSTAIN

Mayor Approval: \_\_\_\_\_, 2007

Mayor Approval/No Return: \_\_\_\_\_, 2007

Mayor Veto: \_\_\_\_\_, 2007

Council Override Vote: \_\_\_\_\_, 2007

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY:   
Kathryn C. Phelan  
Deputy City Attorney



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	12
COUNCIL MEETING	8/29/06
APPROVED BY	
DEPARTMENT DIRECTOR	<i>[Signature]</i>
CITY MANAGER	

August 22, 2006

FROM: JERRY DYER, Chief of Police  
Police Department

BY: HENDRIKUS A. BENNINK, Lieutenant  
Special Investigations Bureau

Presented to City Council  
 Date 8-22-06  
 Disposition B-22-B-1-22  
Inter. Sec'd 2/21

SUBJECT: REPEAL OF SECTION 8-221 OF THE FRESNO MUNICIPAL CODE TITLED "MEDICAL MARIJUANA DISPENSARIES" AND ADOPTION OF SECTION 12-306-N TO THE FRESNO MUNICIPAL CODE RELATING TO PROPERTY DEVELOPMENT STANDARDS FOR MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA COOPERATIVES

KEY RESULT AREA

Public Safety

Presented to City Council  
 Date 8/29/06  
 Disposition Ord. 06 130  
accepted

RECOMMENDATIONS

The Police Department recommends that Council repeal Section 8-221 of the Fresno Municipal Code titled, "Medical Marijuana Dispensaries" and adopt Section 12-306-N to the Fresno Municipal Code (FMC) regarding the property development standards for medical marijuana dispensaries and medical marijuana cooperatives.

EXECUTIVE SUMMARY

On October 26, 2004, Council adopted Fresno Municipal Code Section 8-221 of the Fresno Municipal Code on an emergency basis. At that time, there was nothing to regulate an individual or business attempting to establish medical marijuana dispensaries within the City limits of Fresno. There was also nothing to prevent an individual or business from traveling throughout the City of Fresno transporting large quantities of marijuana for distribution to qualified individuals.

Section 8-221 allowed the City to immediately begin enforcing the restrictions of this ordinance on medical marijuana dispensaries. This ordinance also prevented individuals and businesses from establishing new medical marijuana dispensaries while the Council considered adoption of this proposed property development standards. This prevented medical marijuana dispensaries claiming exemption from the ordinance based on the argument that they represented a pre-existing lawful business establishment.

The Compassionate Use Act (Health and Safety Code § 11362.5 et seq.) was adopted by the voters of California in 1996. It was intended to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The Act is also intended to ensure that patients and the primary caregivers, who obtain, cultivate, or use marijuana for medical purposes, not be subject to criminal prosecution or sanctions.

In 2003 the State Legislature approved SB420, which provided additional statutory guidance regarding medical marijuana use. One of the sections added to the State law by SB420 is Health and Safety Code § 11362.83.

EXHIBIT B

That section states, "Nothing in this article shall prevent the city or other local governing body from adopting and enforcing laws consistent with this article."

Currently, the act allows for a qualified patient to designate someone as his or her primary caregiver. The act also allows a person to be the primary caregiver to an unlimited number of patients. This provision of the act allows a primary caregiver to obtain, possess, cultivate, transport and distribute vast amounts of marijuana without restrictions. The proposed ordinance allows medical marijuana dispensaries and/or medical marijuana cooperatives in a zone district designated for medical offices only if consistent with State and Federal law.

### **KEY OBJECTIVE BALANCE**

The Police Department's proposal best balances the three Key Objectives of Customer Satisfaction, Employee Satisfaction and prudent Financial Management. The proposal carries no fiscal impact and will protect the public from the criminal activities that occur in areas that allow Medical Marijuana Dispensaries and Cooperatives, and presents the best solutions for enhancing customer and employee satisfaction.

### **BACKGROUND**

The Compassionate Use Act (Health and Safety Code § 11362.5 *et seq.*) was adopted by the voters of California in 1996. It is intended to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The Compassionate Use Act (hereinafter "the Act") provides for the medical use of marijuana that has been deemed appropriate and recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. The Act is also intended to ensure that patients and their primary caregivers, who obtain, cultivate, or use marijuana for medical purposes, are not subject to criminal prosecution or sanctions.

In 2003, the State Legislature approved SB420, which provided additional statutory guidance regarding medical marijuana use. One of the sections added to State law by SB420 is Health and Safety Code § 11362.83. That section states, "[n]othing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article."

Currently, the Act allows for a patient to designate someone as his or her primary caregiver. The Act also allows a person to be the primary caregiver to an unlimited number of patients. This provision of the Act allows a primary caregiver to obtain, possess, cultivate, transport and distribute vast amounts of marijuana without restrictions.

In several cities, some people have used this provision to set up Medical Marijuana Dispensaries (MMD) at fixed locations. Currently, the city of Lompoc is attempting to prevent an individual, who has requested a business permit, from starting a mobile Medical Marijuana Dispensary. Without this city ordinance in place, Medical Marijuana Dispensaries could operate within the city without restriction.

Police officials were contacted in Roseville, Oakland, Hayward, Lake County and Fairfax. All of these cities have, or had, operating Medical Marijuana Dispensaries and report adverse impacts in and around these facilities.

REPORT TO THE CITY COUNCIL

Property Development Standards for Medical Marijuana

August 22, 2006

Page 3

Some of the problems observed are:

- Smoking of marijuana in and around the facility.
- Patients congregating and smoking marijuana at nearby parks.
- Attempted burglaries into the dispensary building.
- Increase in crime near the dispensary.
- Negative impact on nearby businesses.
- Increase in the number of people coming from out of town to obtain recommendations and drugs.

LEGAL AUTHORITIES FOR REGULATING MEDICAL MARIJUANA DISPENSARIES

A. State law regarding medical marijuana

The Compassionate Use Act (Health and Safety Code § 11362.5 *et seq.*) was adopted by the voters of California in 1996. It is intended to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The Compassionate Use Act (hereinafter "the Act") provides for the medical use of marijuana that has been deemed appropriate and recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. The Act is also intended to ensure that patients and their primary caregivers who obtain, cultivate, or use marijuana for medical purposes are not subject to criminal prosecution or sanctions.

In 2003, the state legislature approved SB420 which provided additional statutory guidance regarding medical marijuana use. One of the sections added to state law by SB420 is Health and Safety Code § 11362.83. That section states, "[n]othing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article."

B. The proposed ordinance is not preempted by State law.

A local ordinance is preempted by state law if "the subject matter has been so fully....covered by general law as to clearly indicate that it has become exclusively a matter of state concern," or if "the subject matter has been partially covered by general law couched in such terms as to indicate ...a paramount state concern will not tolerate further....local action....(In *re Hubbard* (1964) 62 Cal.2d 119, 127-128, overruled on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63; *Sports Committee Dist. 37 A.M.A., Inc. v. County of San Bernardino* (1980) 113 Cal.App.3d 155, 159).

Medical marijuana dispensaries as defined in this ordinance are not addressed by the Act. While the Act does authorize the collective or cooperative cultivation of medical marijuana, no such authorization is provided for the collective or cooperative distribution of medical marijuana. The establishment, regulation, or prohibition of medical marijuana dispensaries has not been covered by state law.

Health and Safety Code § 11362.83 specifically authorizes local governments to adopt and enforce laws consistent with the Act. The legislature chose not to preempt the entire field of medical marijuana law and expressly authorized local action.

C. The proposed ordinance requires consistency with State and Federal Law.

State law provides that qualified patients, persons with identification cards, or primary caregivers who possess, use, and/or cultivate (either solely or collectively) medical marijuana, are not subject on that sole basis to criminal liability. The proposed ordinance regulating dispensaries that distribute marijuana do not impart criminal liability based solely on possession, use, or cultivation as described in the Act. The proposed ordinance does not eliminate a person's right to obtain medical marijuana. This ordinance simply requires medical marijuana dispensaries and medical marijuana cooperatives to operate consistent with federal and state law.

D. Conclusion

The proposed ordinance is a proper exercise of the City's police power by regulating the zoning requirements on medical marijuana dispensaries to protect the health, safety and welfare of the citizens of Fresno. The proposed ordinance does not prohibit or eliminate the availability or use of medical marijuana.

**FISCAL IMPACT**

No anticipated fiscal impact.

Attachment: Exhibit A – Proposed Ordinance

HAB/jg  
8/0806

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

BILL NO. B-122

ORDINANCE NO. 2006-130

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
REPEALING SECTION 8-221 AND AMENDING SECTION 12-306-N  
OF THE FRESNO MUNICIPAL CODE, RELATING TO MEDICAL  
MARIJUANA DISPENSARIES.

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

SECTION 1. Section 8-221 of the Fresno Municipal Code is repealed.

SECTION 2. Section 12-306-N is hereby amended to read:

SECTION 12-306-N. PROPERTY DEVELOPMENT STANDARDS.

19. (a). "Medical Marijuana" is defined as set forth in  
California Health and Safety Code § 11362.5 et seq.
- (b) A "Medical Marijuana Dispensary" means any facility  
or location, whether fixed or mobile, where medical  
marijuana is made available to, distributed by, or distributed  
to one or more of the following: (1) a qualified patient, (2) a  
person with an identification card, or (3) a primary caregiver.  
All three of these terms are defined in strict accordance with  
California Health and Safety Code section 11362.5 et seq.  
Unless otherwise regulated by this Code or applicable law, a  
"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

Adopted 8/29/06  
Approved 9/16/06  
Effective 10/7/06

2006-130

Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses 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.

- (c) A "Medical Marijuana Cooperative" involves two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or giving away medical marijuana.
- (d) A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed only in a zone district designated for medical offices and only if consistent with state and federal law.

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, REBECCA E. KLISCH, 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 29th day of August, 2006.

AYES : Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Dunca  
NOES : None  
ABSENT : None  
ABSTAIN : None

Mayor Approval: September 6, 2006

Mayor Approval/No Return: N/A, 2006

Mayor Veto: N/A, 2006

Council Override Vote: N/A, 2006

REBECCA E. KLISCH  
City Clerk

BY: Rebecca E. Klisch

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: [Signature]

August 30, 2006

Council Adoption: 08/29/06

TO: MAYOR ALAN AUTRY

RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC  
City Clerk

REC 2006 SEP -6 AM 11:23

Mayor Veto:

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 08/29/06, Council adopted the attached Ordinance No. 2006-<sup>3</sup>180, entitled **Repealing and adopting FMC re: property dev. standards for medical marijuana dispensaries/cooperatives**, Item No. 1Q, by the following vote:

Ayes	:	Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Duncan
Noes	:	None
Absent	:	None
Abstain	:	None

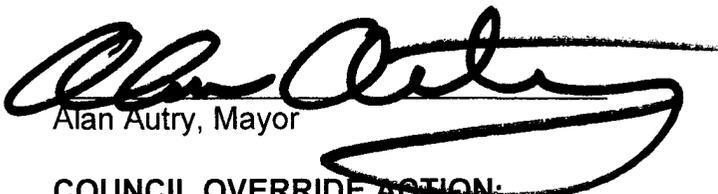
Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before September 11, 2006. In computing the ten day period required by Charter, the first day has been excluded and 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:**

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

  
Alan Autry, Mayor

Date: 9/6/06

**COUNCIL OVERRIDE ACTION:**

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

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	

FRESNO CITY PLANNING COMMISSION  
RESOLUTION NO. 12671

The Fresno City Planning Commission at its regular meeting on April 4, 2007, adopted the following resolution relating to Text Amendment No. TA-06-03, initiated by the Planning and Development Department Director.

Text Amendment No. TA-06-03: The purpose of this text amendment is twofold: 1) To provide alternative methods of noticing the public hearings for a rezone application when the mailing list exceeds either five hundred (500) or one thousand (1,000) property owners; and 2) To provide definitions and standards for "Medical Marijuana as set forth in California Health and Safety Code § 11362.5 et seq.

WHEREAS, a public hearing before the Planning Commission was duly noticed by publication in the Fresno Bee, a local newspaper of wide distribution; and

WHEREAS, the Planning Commission held a public hearing to consider this text amendment proposal on April 7, 2007; and

WHEREAS, the Planning Commission received a staff report, that recommended it recommends that Council approve the text amendment; and

WHEREAS, no one spoke to the issues of the text amendment; and

WHEREAS, Commissioner Torossian suggested the posting of the hearing notice at the County Library and the Fresno County Hall of Records as potential sites for supplemental noticing of a published notice for a rezoning application; and

WHEREAS, the environmental assessment conducted for the proposed text amendment resulted in the filing of No Possibility of Significant Environmental Impact, for the proposed text amendment.

NOW THEREFORE, BE IT RESOLVED that the Fresno City Planning Commission adopts the finding of, No Possibility of Significant Environmental Impact prepared for this project, and furthermore, recommends that Council approve Text Amendment No. TA-06-03.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner Holt, seconded by Commissioner Torossian.

VOTING:	Ayes -	Holt, Torossian, Cherry, Vasquez
	Noes -	None
	Not Voting -	None
	Absent -	DiBuduo, Kissler, Vang

DATED: April 4, 2007

KEITH BERGTHOLD, Assistant Director/Secretary  
Fresno City Planning Commission

Resolution No. 12671

Application No. TA-06-03

Initiated By: Planning and Development Department Director

Action: Recommend Approval