

RESOLUTION NO. _____

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 PROHIBIT RECREATIONAL MARIJUANA OPERATIONS, DISPENSARIES, SALES, AND PUBLIC CONSUMPTION WITHIN THE CITY OF FRESNO

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 recently approved "Proposition 64," which would allow, under state law, marijuana to be dispensed, cultivated, and used for recreational purposes; under Prop 64, recreational marijuana dispensaries would be allowed as of January 2018, following the state's implementation of a regulatory system; Prop 64, however, also recognizes 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, 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

1 of 3

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No.

Ordinance so as to formally address recreational marijuana operations, dispensaries, sales, and public consumption by prohibiting them in all zone districts within the City.

2. The Council further directs staff to bring the Text Amendment before the Airport Land Use Commission for review within thirty-one days (or as soon thereafter as environmental review under CEQA may be legally completed) of the effective date of this Resolution, before the Planning Commission for review within thirty days of it being reviewed by the Airport Land Use Commission, and back before the Council for consideration within thirty days of the Planning Commission's review. Staff shall return to Council thirty days from the effective date of this Resolution to update the Council on the status of the proposed Text Amendment and shall return to Council every thirty days thereafter until it returns to Council for final consideration.

* * * * *

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2017.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Mary Raterman-Doidge Date
Deputy City Attorney

Attachment: Ordinance Adding Section 15-2739.1 Relating to Marijuana

MRD:prn [75491prn/reso] 6-14-17

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
ADDING SECTION 15-2739.1 OF THE FRESNO
MUNICIPAL CODE, RELATING TO MARIJUANA

WHEREAS, the City of Fresno currently prohibits medical marijuana dispensaries; and

WHEREAS, Proposition 64 was approved by the voters of California on November 8, 2016, which expressly legalizes recreational marijuana and marijuana businesses; and

WHEREAS, the City intends to promote the health, safety, and general welfare of the residents and businesses within the City by restricting recreational marijuana activities to the fullest extent allowed under state law.

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

SECTION 1. Section 15-2739.1 of the Fresno Municipal Code is added to read:

SECTION 15-2739.1. RECREATIONAL MARIJUANA ACTIVITIES.

A. Definitions

1. "Marijuana" means all parts of the plant Cannabis sativa L., Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, as defined in California Health and Safety Code § 11018, as may be amended.

Marijuana includes “marijuana products,” which means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis or other ingredients, as defined in California Health and Safety Code § 11018.1, as may be amended.

Marijuana does not include "Medical marijuana" as used for medical purposes in accordance with California Health and Safety Code §§ 11362.7 et seq.

2. "Marijuana Dispensary" means any operation, including a store-front facility or structure, mobile facility, club, or delivery service to or from any location within the city, wherein marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to any person for recreational purposes.

A Marijuana Dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to

Chapter 3.01 of Division 2 of the California Health and Safety Code;
(iv) a residential care facility for the elderly licensed pursuant to
Chapter 3.2 of Division 2 of the California Health and Safety Code;
and (v) a residential hospice or a home health agency licensed
pursuant to Chapter 8 of Division 2 of the California Health and
Safety Code, as long as any such use complies strictly with
applicable law including, but not limited to, California Health and
Safety Code § 11362.7 et seq.

3. A "Commercial Marijuana Operation" includes, other than expressly permitted under the Fresno Municipal Code or state law, any cultivation, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of marijuana.

4. "Consumption of marijuana" means receiving marijuana into the body by any means, including, but not limited to, smoking, eating, drinking, consuming, vaporizing, ingesting and topical application.

B. Consumption of marijuana prohibited in public. Consumption of marijuana is prohibited in any public place, in conformance with state law, including, but not limited to, any city owned building, city owned or leased property, city right-of-way, city parks, and city buses. Any consumption of marijuana shall be done in a manner so as to not cause a

nuisance to nearby occupants with noxious odors or other adverse health and safety impacts.

C. Marijuana Dispensary as a prohibited use. A Marijuana Dispensary is a prohibited use in all zone districts in the city.

D. Commercial Marijuana Operation as a prohibited use. A Commercial Marijuana Operation is a prohibited use in all zone districts in the city.

E. 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 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 _____ day of _____, 2017.

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NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Mary Raterman-Doidge Date
Deputy

MRD:prn [74551prn/ord] 06-14-17