

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 12-2103 BY AMENDING SUBSECTION (c) AND ADDING SUBSECTION (g), AMENDING SECTION 12-2104, AND ADDING SECTIONS 12-2104.1 AND 12-2108 TO THE FRESNO MUNICIPAL CODE, RELATING TO MEDICAL MARIJUANA CULTIVATION.

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

SECTION 1. Section 12-2103 of the Fresno Municipal Code is amended by amending subsection (c) and adding subsection (g) thereto to read:

(c) "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code section[s] 11362.5 [through 11362.83 and affirmatively identified by its owner as medical marijuana].

...

[(g) "Outdoor" shall mean any location that is not totally contained within a "fully enclosed and secure structure" that has been approved by special permit, pursuant to section 12-405 of the Fresno Municipal Code, and has been issued by the Development and Resource Management Department. All proposed buildings and structures constructed on the property must comply with the prevailing California Building Code Standards.]

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: MRD

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SECTION 2. Section 12-2104 of the Fresno Municipal Code is amended to read:

SECTION 12-2104. PROHIBITION OF MEDICAL MARIJUANA CULTIVATION. ~~Marijuana cultivation~~ [Cultivation of medical marijuana] by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city. [Cultivation of marijuana not identified by its owner as medical marijuana is not regulated by this article, but may be prosecuted under applicable state and federal laws.]

SECTION 3. Section 12-2104.1 is added to the Fresno Municipal Code to read:

[SECTION 12-2104.1. LIMITED IMMUNITY. Notwithstanding the activities prohibited by this article, medical marijuana cultivation by primary caregivers and qualified patients shall not be subject to the penalty set forth in Fresno Municipal Code section 12-2105 solely on the basis of: (1) an activity prohibited by section 12-2104; and (2) medical marijuana cultivation is not a permitted activity in the City, provided, however that, as authorized by California Health and Safety Code section 11362.5, this limited immunity is available and may be asserted as an affirmative defense only so long as subsections (a) through (d) of this section 12-2104.1 remain in effect in their entirety and only if the person does not violate any of the following medical marijuana cultivation restrictions:

- (a) All medical marijuana cultivation is prohibited that takes place Outdoors.

(b) All medical marijuana cultivation is prohibited that exceeds four marijuana plants at any single location, with each dwelling of multiple family housing qualifying as a single location for this section.

(c) All medical marijuana cultivation is prohibited that does not take place at an owner or tenant occupied residence located within zone districts R-A, R-1-A, R-1-AH, R-1-E, R-1-EH, R-1-B, R-1-C, R-1, R-2-A, R-2, R-3, R-4, or R-P as designated by the Zoning Ordinance of the City.

(d) All medical marijuana cultivation is prohibited that occurs at a location where minors under the age of 21 reside or are reasonably likely to be present, unless it occurs inside a locked and secured room where minors under the age of 21 cannot obtain access.

Upon probable cause to believe that marijuana cultivation in violation of sections 12-2104 or 12-2104.1 is taking place within a structure, law enforcement officials may have legal cause to obtain a search warrant to enter, inquire, and inspect the interior of the premises to verify compliance with this section; refusal to allow inspection shall cause the limited immunities provided in this section to be unavailable for the occupants and/or owners of that residence who refuse inspection.]

SECTION 4. Section 12-2108 is added to the Fresno Municipal Code to read:

[SECTION 12-2108. NO VESTED OR NONCONFORMING RIGHTS.

This article prohibits medical marijuana cultivation. Neither this article, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their

respective representatives, agents, employees, attorneys, or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana cultivation. Any immunity or benefit conferred by this ordinance shall expire permanently and in full on the effective date of the City Council's enactment of new marijuana cultivation legislation after the issuance of guidance by the California Supreme Court, or otherwise upon repeal of this ordinance. Should the City repeal or amend this article, no claim for loss of property rights or due process of any kind shall be maintained against the City.]

SECTION 5. 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, 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 _____, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override Vote: _____, 2014

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Mary Raterman-Doidge Date
Deputy

MRD:prn [64533prn/ord] 02-26-15