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19 Attorneys for Plaintiffs

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF FRESNO

22 Joan Byrd and  
23 Susan Juvet,

24 Plaintiffs,

25 v.

26 County of Fresno,  
27 City of Fresno,

28 Defendants.

**FILED**  
MAY 27 2014  
FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

Civil Case No.: **14 CE CG 01502** DJK

**Verified petition for writ of mandate  
and complaint for declaratory and  
injunctive relief under Cal. Const.  
art. XI § 7; Health & Safety Code  
§§ 11358, 11362.5, 11362.7-11362.9**

## INTRODUCTION

1. In 1996, the people of this state voted to allow seriously ill Californians to cultivate and use marijuana for medical purposes. In 2004, the legislature expanded these protections. But the County of Fresno and the City of Fresno have both recently passed laws that completely prohibit these patients from cultivating medical marijuana.
2. Because these new ordinances conflict with the decision of the voters and the legislature to allow seriously ill Californians and their caregivers to cultivate medical marijuana, they are preempted by state law and are invalid. Plaintiffs therefore seek mandamus, declaratory, and injunctive relief to prevent the County and the City from enforcing them.
3. Plaintiffs acknowledge that *Maral v. City of Live Oak*, 21 Cal. App. 4th 975 (2013), upheld a cultivation ban that applied *only* within the limits of a very small city. They bring this case in order to advance arguments not raised in that earlier matter and, if necessary, to ask the courts to clarify or reject *Maral's* reasoning and conclusions so that seriously ill individuals throughout California can have the access to medical marijuana that the state's voters and legislature have accorded them.

## JURISDICTION AND VENUE

4. This Court has jurisdiction under article VI, section 10, of the California Constitution and California Code of Civil Procedure § 410.10.
5. Venue in this Court is proper because the action arose in this County and the defendants are situated in this County. *See id.* §§ 393(b), 394(a).

## PARTIES

6. Plaintiff Joan Byrd is a 67-year-old grandmother, a retired employee of the Fresno County Sheriff's Department, and resident of the City of Fresno who uses medical marijuana to alleviate the pain she suffers as a result of a serious injury she suffered at work. While working at the jail, Ms. Byrd was electrocuted and suffered traumatic brain injury causing memory loss and anxiety. The shock, and her body's reaction to it, broke Ms. Byrd's teeth and caused several hairline fractures in her jaw, which has resulted in infections and the loss of teeth. It also resulted in herniated disks in her neck and back.



- 1 7. Ms. Byrd also suffers from other serious medical issues, including fibromyalgia, severe  
2 osteoporosis, and gastrointestinal problems that resulted from a botched gastric bypass  
3 surgery.
- 4 8. Ms. Byrd uses medical marijuana to alleviate pain, anxiety, and nausea caused by her  
5 injuries. Using medical marijuana has enabled her to transition off of other medications that  
6 her doctors had prescribed her. Because she is on a fixed income, and because her health  
7 insurance often changes what medications it will cover, it is difficult for her to consistently  
8 use the medications prescribed by doctors. Medical marijuana is the only medication that  
9 relieves her pain and allows her to function.
- 10 9. Ms. Byrd has a recommendation from her physician to use medical marijuana. In the past,  
11 Ms. Byrd has grown her own medical marijuana at her residence and has never encountered  
12 any problems. She is currently relying on the medical marijuana that she has grown.
- 13 10. Ms. Byrd does not know how she will access medical marijuana when the City's ordinance  
14 becomes effective. Because she is retired and on a fixed income, driving outside Fresno  
15 County to obtain medical marijuana is cost prohibitive. Also, Ms. Byrd is afraid of going  
16 outside of Fresno to obtain medical marijuana because she could be exposed to criminal  
17 penalties if she is stopped in her car while transporting it. As a former law enforcement  
18 professional, she does not want to violate California law in order to access medical  
19 marijuana. Instead, she would like to cultivate her own marijuana for her personal, medical  
20 use, but will be prohibited from doing so by the City's ban.
- 21 11. Ms. Byrd owns real property in the City of Fresno and has been assessed and has paid  
22 property taxes on the property within the last year. She brings this case as an individual  
23 personally affected by the law and as a citizen and taxpayer of the County of Fresno and the  
24 City of Fresno.
- 25 12. Plaintiff Susan Juvet is a resident of the City of Fresno who uses medical marijuana to treat  
26 the pain that she suffers as a result of fibromyalgia, which she has had since she was eleven  
27 years old, and to treat arthritis. She uses medical marijuana instead of prescription pain  
28

1 medication because those medications, particularly those containing morphine and other  
2 opiates, cause allergic reactions. One such allergic reaction necessitated the removal of  
3 eighteen inches of her colon, further complicating her ability to use prescription medication  
4 as it makes it extremely difficult for her to go to the bathroom. In addition, the prescription  
5 medication for fibromyalgia causes terrible swelling and itching.

6  
7 13. Ms. Juvet has a recommendation from her physician to use medical marijuana. In the past,  
8 she has grown her own medical marijuana in a secure area of her property and has never  
9 encountered any problems. She is currently relying on the medical marijuana that she has  
10 grown. She does not know how she will access medical marijuana when the City's  
11 ordinance becomes effective. If Ms. Juvet uses medical marijuana that she has not grown  
12 herself, then there is risk that she will have an allergic reaction to any pesticides that were  
13 used during its cultivation. Both the financial costs and physical difficulties of driving  
14 prevent her from traveling outside of Fresno to obtain medical marijuana. She does not have  
15 a primary caregiver. She would like to cultivate her own marijuana for her personal,  
16 medical use, but will be prohibited from doing so by the City's ban.

17 14. Ms. Juvet owns real property in the City of Fresno and has been assessed and has paid  
18 property taxes on the property within the last year. She brings this case as an individual  
19 personally affected by the law and as a citizen and taxpayer of the County of Fresno and the  
20 City of Fresno.

21 15. On March 27, 2014, both Ms. Byrd and Ms. Juvet spoke at the City Council meeting, asking  
22 the members to vote against the cultivation ban because it would impair access to medical  
23 marijuana for qualified patients.

24 16. Defendant County of Fresno is a legal subdivision of the State of California. The County  
25 has a population of more than 950,000 people and covers more than 6,000 square miles.

26 17. Defendant City of Fresno is a municipal corporation organized under California law. It is  
27 the largest city in Fresno County, with a population of more than 500,000 people.  
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## LEGAL BACKGROUND AND FACTS

18. California state law has long prohibited the possession and cultivation of marijuana. *See* Health and Safety Code §§ 11357, 11358. The term “marijuana” includes “all parts of the plant *Cannabis sativa* L.” as further specified in the statute. *Id.* § 11018.

19. However, in 1996, the people of this state voted to adopt the Compassionate Use Act (CUA) “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” § 11362.5(b)(1)(A), (B).

20. As the official ballot pamphlet emphasized, the CUA is meant to allow patients and their caregivers to “grow” and “cultivate” marijuana for medical use. The proponents quite clearly pointed out that the law “allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana.” And the very first point made in the Attorney General’s Title and Summary is that the law “[e]xempts patients and defined caregivers who possess or *cultivate* marijuana ... from criminal laws which otherwise prohibit possession or *cultivation* of marijuana.” A true copy of the ballot materials relating to the CUA is attached to this complaint as Exhibit A.

21. To accomplish this goal, the initiative created a defense to the then-existing criminal laws prohibiting marijuana possession and cultivation. At the time the voters enacted the CUA, no local jurisdiction banned or regulated the cultivation of marijuana. Nothing in the CUA authorizes local jurisdictions to enact bans on the use, possession, or cultivation of medical marijuana.

22. In 2004, the Legislature expanded state protections for medical-marijuana use by enacting the Medical Marijuana Program (MMP), § 11362.7 *et seq.* One of the purposes of the MMP is to “[p]romote uniform and consistent application of the [CUA] among the counties within the state.” 2003 Cal. Legis. Serv. Ch. 875 (S.B. 420 § 1(b)(2)).

23. The MMP is much more detailed and precise, than is the CUA. Most relevant to this matter, whereas the CUA allows qualified patients to grow or possess a reasonable amount of

1 marijuana “for personal medical purposes,” § 11362.5(d), the MMP contains precise  
2 quantities and specifically states that “[a] qualified patient or primary caregiver may possess  
3 no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified  
4 patient or primary caregiver may also maintain no more than six mature or 12 immature  
5 marijuana plants per qualified patient.” § 11362.77(a).

6 24. Although the MMP expressly authorizes cities and counties to “retain or enact medical  
7 marijuana guidelines allowing qualified patients or primary caregivers to *exceed* the state  
8 limits” mentioned above, no provision allows local governments to impose limits that are  
9 *smaller* than those specified in the state statute, much less to completely ban cultivation.  
10 § 11362.77(c). Furthermore, although the law specifically allows local governments to  
11 establish civil or criminal regulations of medical-marijuana cooperatives and dispensaries,  
12 §§ 11362.768(g), 11362.83, it does not include any corresponding authority to regulate  
13 cultivation.

14 25. At the time the legislature enacted the MMP, no local California jurisdiction banned or  
15 regulated the possession or cultivation of medical marijuana.

16 26. On January 7, 2014, the Fresno County Board of Supervisors adopted Fresno County  
17 Ordinance No. 14-001, with the express “purpose and intent ... to prohibit cultivation of  
18 medical marijuana.” Fresno County Ordinance No. 14-001 § 3, codified as Ordinance Code  
19 of Fresno County § 10.60.010. This ordinance is also meant to “continue in effect Fresno  
20 County’s prohibition of medical marijuana dispensaries.” *Id.*; *see id.* § 10.60.050  
21 (prohibiting medical-marijuana dispensaries). A true copy of this ordinance is attached to  
22 this complaint as Exhibit B.

23 27. The county ordinance carries out this purpose by banning all medical marijuana cultivation:  
24 “Medical marijuana cultivation is prohibited in all zone districts in the County.” *Id.*  
25 § 10.60.060. Violations are punishable as misdemeanors. *Id.* § 10.60.080. In addition, the  
26 “establishment, maintenance, or operation of any prohibited cultivation of medical  
27 marijuana, as defined in this chapter, within the County is declared to be a public nuisance  
28



- 1 and each person or responsible party is subject to abatement proceedings under Chapter  
2 10.62.” *Id.* § 10.60.070.
- 3 28. The code defines marijuana to “have the same definition as in California Health and Safety  
4 Code Section 11018,” and medical marijuana to mean “marijuana used for medical  
5 purposes” under the MMP. *Id.* § 10.60.030(B), (C). “‘Cultivate’ or ‘cultivation’ is the  
6 planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants  
7 or any part thereof in any location.” *Id.* § 10.60.030(D).
- 8 29. On March 27, 2014, the City of Fresno also banned all cultivation of medical marijuana by  
9 enacting Ordinance No. 2014.20, codified as Fresno Municipal Code § 12-2101 *et seq.* A  
10 true copy of this ordinance is attached to this complaint as Exhibit C.
- 11 30. Like the County, the City passed its ordinance in order “to prohibit the cultivation of  
12 marijuana.” Fresno Municipal Code § 12-2101.
- 13 31. This new city ordinance states that “Marijuana cultivation by any person, including primary  
14 caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in  
15 all zone districts within the city.” *Id.* § 12-2104. The ordinance defines marijuana as “all  
16 parts of the plant *Cannabis sativa* L., whether growing or not, and includes medical  
17 marijuana.” *Id.* § 12-2103(b). It defines “cultivation” to mean “the planting, growing,  
18 harvesting, drying, processing, or storage of one or more marijuana plants or any part  
19 thereof in any location.” *Id.* § 12-2103(a).
- 20 32. Violations are subject to civil fines and abatement, as well as enforcement costs. *Id.* § 12-  
21 2105. The ordinance includes a 120-day grace period for ongoing indoor, but not outdoor,  
22 cultivation. *Id.* § 12-2107.

### **FIRST CAUSE OF ACTION**

#### **Both Plaintiffs against Defendant County of Fresno (Violation of California Constitution, Article XI § 7, CUA, MMP)**

- 26 33. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set  
27 forth herein.
- 28

- 1 34. Under Article XI § 7 of the California Constitution, a “county or city may make and enforce  
2 within its limits all local, police, sanitary, and other ordinances and regulations not in  
3 conflict with general laws.” Local ordinances and regulations that are in conflict with state  
4 law are preempted.  
5  
6 35. The County’s laws prohibiting the cultivation of medical marijuana conflict with the CUA,  
7 the MMP, and Health and Safety Code §§ 11357, 11358 and are therefore preempted by  
8 these state laws.

9 **SECOND CAUSE OF ACTION**

10 **Both Plaintiffs against Defendant City of Fresno**  
11 **(Violation of California Constitution, Article XI § 7, CUA, MMP)**

- 12 36. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set  
13 forth herein.  
14  
15 37. Under Article XI § 7 of the California Constitution, a “county or city may make and enforce  
16 within its limits all local, police, sanitary, and other ordinances and regulations not in  
17 conflict with general laws.” Local ordinances and regulations that are in conflict with state  
18 law are preempted.  
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20 38. The City’s laws prohibiting the cultivation of marijuana, including medical marijuana,  
21 conflict with the CUA, the MMP, and Health and Safety Code §§ 11357, 11358 and are  
22 therefore preempted by these state laws.

23 **THIRD CAUSE OF ACTION**

24 **(Taxpayer Action under Code of Civ. Proc. § 526a to**  
25 **Prevent Illegal Expenditure of Funds)**  
26 **(Both Plaintiffs against both Defendants)**

- 27 39. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set  
28 forth herein.  
40. Defendants are illegally expending public funds by maintaining and enforcing their laws  
prohibiting medical marijuana cultivation, because those laws are preempted by state law.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that the Court:



- 1 A. Issue a peremptory writ of mandate prohibiting Defendants from enforcing their laws that  
2 prohibit the cultivation of marijuana and medical marijuana.  
3 B. Issue a declaration that these ordinances are invalid as conflicting with state law.  
4 C. Grant injunctive relief prohibiting Defendants from enforcing these laws.  
5 D. Order Defendant to pay Plaintiffs' attorneys' fees and costs under Code Civ. Proc.  
6 § 1021.5, and any other applicable statutes.  
7 E. Grant Plaintiffs such further relief as the Court deems just and proper.  
8

9 Dated: May 26, 2014

Respectfully submitted,

10 Michael Temple Risher  
11 M. Allen Hopper  
12 Novella Y. Coleman  
13 Jolene M. Forman  
American Civil Liberties Union  
Foundation of Northern California, Inc.

14 By:   
15 Novella Y. Coleman

16 Attorneys for Plaintiffs  
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VERIFICATION

I, Joan Byrd, have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Byrd v. County of Fresno*. I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein within paragraphs 1-5, 12-14 and 16-32 are true. In addition, the facts within paragraphs 6-11 and 15 are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 5-26-14

Joan Byrd



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VERIFICATION

I, Susan Juvet, have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Byrd v. County of Fresno*. I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein within paragraphs 1–11 and 16–32 are true. In addition, the facts within paragraphs 12–15 are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 5/26/14

  
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# EXHIBIT A



# California

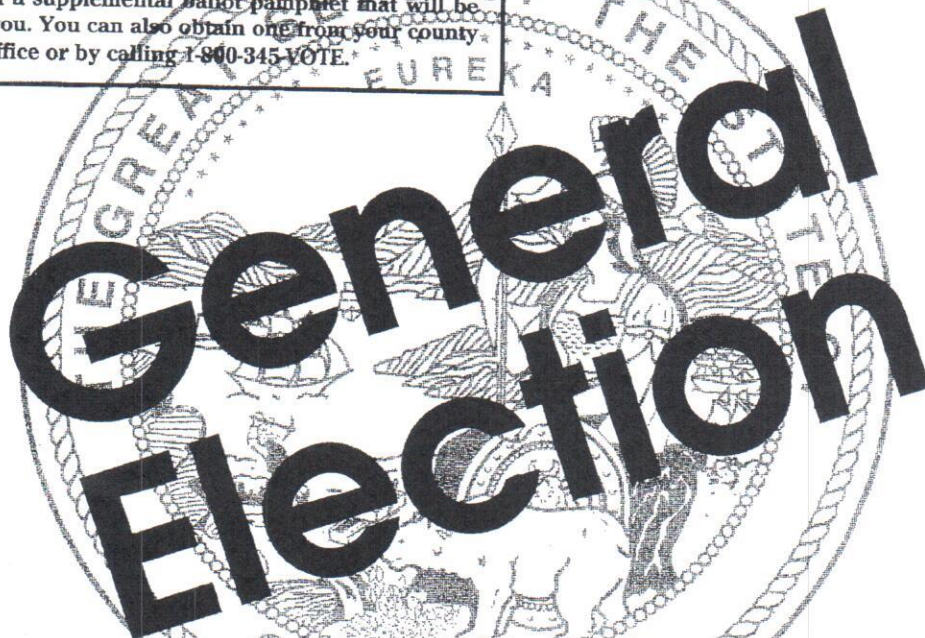
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## BALLOT PAMPHLET

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### Important Notice to Voters

Information regarding measures that might be placed on the ballot by the Legislature after August 12, 1996 will be included in a supplemental ballot pamphlet that will be mailed to you. You can also obtain one from your county elections office or by calling 1-800-345-VOTE.



**General  
Election**

**NOVEMBER 5, 1996**

### CERTIFICATE OF CORRECTNESS

I, Bill Jones, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 5, 1996, and that this pamphlet has been correctly prepared in accordance with law.



Witness my hand and the Great Seal of the State in Sacramento, California,  
this 12th day of August, 1996.

*Bill Jones*

BILL JONES  
Secretary of State



## November 5, 1996, Ballot Measures—Continued

	SUMMARY	WHAT YOUR VOTE MEANS	
		YES	NO
<b>214</b> <b>HEALTH CARE.</b> <b>CONSUMER PROTECTION.</b> Initiative Statute Put on the Ballot by Petition Signatures	Regulates health care businesses. Prohibits discouraging health care professionals from informing patients or advocating treatment. Requires health care businesses to establish criteria for payment and facility staffing. Fiscal Impact: Increased state and local government costs for existing health programs and benefits, probably in the tens to hundreds of millions of dollars annually.	A <b>YES</b> vote on this measure means: Physical examinations would be required before health plans or insurers could deny recommended care. State staffing standards would be expanded to more types of health facilities, taking the needs of individual patients into account. Health care businesses could not offer financial incentives to doctors and others to reduce care. Certain health care employees and contractors would have additional protections.	A <b>NO</b> vote on this measure means: There would be no requirements regarding physical examinations prior to denial of recommended care. There would not be any change to current state and federal laws regarding health facility staffing, health care employee and contractor protections, and restrictions on financial incentives to reduce care.
<b>215</b> <b>MEDICAL USE OF MARIJUANA.</b> Initiative Statute Put on the Ballot by Petition Signatures	Exempts from criminal laws patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician. Provides physicians who recommend use shall not be punished. Fiscal Impact: Probably no significant fiscal impact on state and local governments.	A <b>YES</b> vote on this measure means: Persons with certain illnesses (and their caregivers) could grow or possess marijuana for medical use when recommended by a physician. Laws prohibiting the nonmedical use of marijuana are not changed.	A <b>NO</b> vote on this measure means: Growing or possessing marijuana for any purpose (including medical purposes) would remain illegal.
<b>216</b> <b>HEALTH CARE.</b> <b>CONSUMER PROTECTION.</b> <b>TAXES ON CORPORATE RESTRUCTURING.</b> Initiative Statute Put on the Ballot by Petition Signatures	Regulates health care businesses. Prohibits discouraging health care professionals from informing patients. Prohibits conditioning coverage on arbitration agreement. Establishes nonprofit consumer advocate. Imposes taxes on corporate restructuring. Fiscal Impact: New tax revenues, potentially hundreds of millions of dollars annually, to fund specified health care. Additional state and local government costs for existing health programs and benefits, probably tens to hundreds of millions of dollars annually.	A <b>YES</b> vote on this measure means: New taxes would be imposed on health care businesses to fund specified health care services. Physical examinations would be required before health plans or insurers could deny recommended care. State staffing standards would be set for all health facilities, taking the needs of individual patients into account. Health care businesses could not offer financial incentives to doctors and others to reduce care. Certain health care employees and contractors would have additional protections.	A <b>NO</b> vote on this measure means: New taxes would not be imposed on health care businesses to finance health care services. There would be no requirement regarding physical examinations prior to denial of recommended care. There would not be any change to current state and federal laws regarding health facility staffing, health care employee and contractor protections, and restrictions on financial incentives to reduce care.
<b>217</b> <b>TOP INCOME TAX BRACKETS.</b> <b>REINSTATEMENT. REVENUES TO LOCAL AGENCIES.</b> Initiative Statute Put on the Ballot by Petition Signatures	Retroactively reinstates highest tax rates on taxpayers with taxable income over \$115,000 and \$230,000 (current estimates) and joint taxpayers with taxable incomes over \$230,000 and \$460,000 (current estimates). Allocates revenue from those rates to local agencies. Fiscal Impact: Annual increase in state personal income tax revenues of about \$700 million, with about half the revenues allocated to schools and half to other local governments.	A <b>YES</b> vote on this measure means: Income taxes will be raised on the highest income taxpayers in the state, with the increased revenues going to schools and other local governments.	A <b>NO</b> vote on this measure means: Income taxes on the highest-income taxpayers in the state will not be raised.
<b>218</b> <b>VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES.</b> <b>LIMITATIONS ON FEES, ASSESSMENTS, AND CHARGES.</b> Initiative Constitutional Amendment Put on the Ballot by Petition Signatures	Requires a majority of voters to approve increases in general taxes. Requires property-related assessments, fees, charges be submitted to property owners for approval. Fiscal Impact: Short-term local government revenue losses of more than \$100 million annually. Long-term local government revenue losses of potentially hundreds of millions of dollars annually. Comparable reductions in spending for local public services.	A <b>YES</b> vote on this measure means: Local governments' ability to charge assessments and certain property-related fees would be significantly restricted. Spending for local public services would be reduced accordingly. Many existing and future local government fees, assessments, and taxes would be subject to voter-approval.	A <b>NO</b> vote on this measure means: Local governments could continue to collect existing property-related fees, assessments, and taxes to pay for local public services. Local governments would have no new voter-approval requirements for revenue increases.



## November 5, 1996, Ballot Measures—Continued

ARGUMENTS		WHOM TO CONTACT FOR MORE INFORMATION	
PRO	CON	FOR	AGAINST
<p>Proposition 214 protects freedom of speech between patients and doctors, and patients' right to the care that their health insurance has already paid for. It prevents HMOs and insurers from using gag rules, intimidation, or financial incentives to discourage doctors from providing needed care. Please, vote yes on Proposition 214.</p>	<p>Proposition 214, like 216, is bogus health care reform. It increases health insurance by up to 15% (costing <i>billions</i>), costs taxpayers hundreds of millions, and helps trial lawyers file more frivolous lawsuits. 214 and 216 could cost 60,000 workers their jobs but don't provide health coverage to anyone. Vote <i>no</i>.</p>	<p>Californians for Patient Rights 560 Twentieth Street Oakland, CA 94612 (510) 433-9360 Internet Address: <a href="http://www.yes-prop214.org">http://www.yes-prop214.org</a></p>	<p>Taxpayers Against Higher Health Costs Stop the Hidden Health Care Tax 915 L Street, Suite C240 Sacramento, CA 95814 (916) 552-7526 (800) 996-6287 Fax: (916) 552-7523 Web Site: <a href="http://www.noprop214.org">http://www.noprop214.org</a></p>
<p>Marijuana can relieve pain and suffering in serious illnesses like cancer, glaucoma and AIDS. Proposition 215 permits patients to use marijuana, <i>but only if they have the approval of a licensed physician</i>. Tight controls limiting marijuana to patients only will remain in place. Cancer doctors and nurses groups support 215.</p>	<p><i>Proposition 215 legalizes marijuana. Vote no.</i> It allows people to grow and smoke marijuana for stress or "any other illness." No written prescription or examination is required, even children can smoke pot legally. The American Cancer Society rejects smoking marijuana for medical purposes and no major doctor's organization supports 215.</p>	<p>Californians for Medical Rights 1250 Sixth Street, #202 Santa Monica, CA 90401 (310) 394-2952 Fax: (310) 451-7494 Internet home page: <a href="http://www.prop215.org">http://www.prop215.org</a></p>	<p>Citizens for a Drug-Free California Sheriff Brad Gates, Chairman 4901 Birch Street Newport Beach, CA 92660 (714) 476-3017</p>
<p>Protects consumers against unsafe care by insurance companies and HMOs. Outlaws bonuses to doctors for denying treatment. Restores control of patient care to doctors and nurses. Saves lives. Reduces costs to taxpayers, businesses. Bans unjustified premium increases. Creates independent watchdog. Backed by California Nurses Association, Harvey Rosenfield and Ralph Nader.</p>	<p>Propositions 216 and 214 are near twins—phony health care reform that costs taxpayers and consumers billions without providing coverage to the uninsured. 216 means: four new taxes; dramatically higher health insurance costs; more government bureaucrats; more frivolous lawsuits for trial lawyers; and up to 60,000 lost jobs. Vote <i>no</i>.</p>	<p>Harvey Rosenfield Consumers and Nurses for Patient Protection 1750 Ocean Park #200 Santa Monica, CA 90405 (310) 392-0522 E-Mail: <a href="mailto:network@primenet.com">network@primenet.com</a></p>	<p>Taxpayers Against Higher Health Costs Stop the Hidden Health Care Tax 915 L Street, Suite C240 Sacramento, CA 95814 (916) 552-7526 (800) 996-6287 Fax: (916) 552-7523 Web Site: <a href="http://www.noprop216.org">http://www.noprop216.org</a></p>
<p>Proposition 217 restores a little fiscal sanity to California. It cancels a tax cut for the wealthiest 1.2%—a cut the rest of us won't get—to protect schools and restore local funding the state took away. Support your local schools, law enforcement, libraries, parks, and child protection. Vote <i>yes</i>.</p>	<p><i>Taxes already are too high!</i> Retroactive tax increase effectively gives California highest personal income tax rate nationwide. Small businesses would be hurt. <i>Absolutely no guarantees or accountability how the new tax money would be spent.</i> Contains too many provisions with uncertain and even potentially dangerous economic consequences. <i>No on 217!</i></p>	<p>Yes on Proposition 217 2500 Wilshire Blvd., Suite 508 Los Angeles, CA 90057 213-386-4036 Web site address: <a href="http://www.prop217.org">http://www.prop217.org</a></p>	<p>Californians for Jobs, Not More Taxes/No on 217 111 Anza Boulevard, Suite 406 Burlingame, CA 94010 (415) 340-0470</p>
<p>Proposition 218 simply gives taxpayers the right to vote on taxes. Proposition 218 provides only registered Californians vote on taxes. Nonresidents, foreigners, corporations get no new rights. Proposition 218 doesn't cut traditional "lifeline" services; allows taxes for police, fire, education. <i>Your right to vote on taxes: Yes on Proposition 218.</i></p>	<p>Gives large landowners—including noncitizens—more voting power than average homeowners. Denies assessment voting rights for renters. Cuts <i>existing</i> funding for local police, fire, library services. Adds <i>new taxes</i> on public property like neighborhood schools, cutting funds available for teaching and classroom supplies and computers; increases <i>school crowding</i>.</p>	<p>The Howard Jarvis Taxpayers Association The Right to Vote on Taxes Act, Yes on Prop. 218 621 S. Westmoreland Avenue, Suite 202 Los Angeles, CA 90005 (213) 384-9656</p>	<p>Citizens for Voters' Rights 2646 Dupont Dr., Suite 20-412 Irvine, CA 92612 (714) 222-5438 <a href="http://www.prop218no.org">http://www.prop218no.org</a></p>



## **Medical Use of Marijuana. Initiative Statute.**

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### **Official Title and Summary Prepared by the Attorney General**

#### **MEDICAL USE OF MARIJUANA. INITIATIVE STATUTE.**

- Exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.
- Provides physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege.
- Declares that measure not be construed to supersede prohibitions of conduct endangering others or to condone diversion of marijuana for non-medical purposes.
- Contains severability clause.

#### **Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Adoption of this measure would probably have no significant fiscal impact on state and local governments.
-



## Analysis by the Legislative Analyst

### BACKGROUND

Under current state law, it is a crime to grow or possess marijuana, regardless of whether the marijuana is used to ease pain or other symptoms associated with illness. Criminal penalties vary, depending on the amount of marijuana involved. It is also a crime to transport, import into the state, sell, or give away marijuana.

Licensed physicians and certain other health care providers routinely prescribe drugs for medical purposes, including relieving pain and easing symptoms accompanying illness. These drugs are dispensed by pharmacists. Both the physician and pharmacist are required to keep written records of the prescriptions.

### PROPOSAL

This measure amends state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. The measure provides for the use of marijuana when a physician has determined that the person's health would benefit from its use in the

treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." The physician's recommendation may be oral or written. No prescriptions or other record-keeping is required by the measure.

The measure also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended.

The measure states that no physician shall be punished for having recommended marijuana for medical purposes. Furthermore, the measure specifies that it is not intended to overrule any law that prohibits the use of marijuana for *nonmedical* purposes.

### FISCAL EFFECT

Because the measure specifies that growing and possessing marijuana is restricted to medical uses when recommended by a physician, and does not change other legal prohibitions on marijuana, this measure would probably have no significant state or local fiscal effect.

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For text of Proposition 215 see page 104

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# 215

## Medical Use of Marijuana. Initiative Statute.

### Argument in Favor of Proposition 215

#### PROPOSITION 215 HELPS TERMINALLY ILL PATIENTS

Proposition 215 will allow seriously and terminally ill patients to legally use marijuana, if, and only if, they have the approval of a licensed physician.

We are physicians and nurses who have witnessed firsthand the medical benefits of marijuana. *Yet today in California, medical use of marijuana is illegal.* Doctors cannot prescribe marijuana, and terminally ill patients must break the law to use it.

Marijuana is not a cure, but it can help cancer patients. Most have severe reactions to the disease and chemotherapy—commonly, severe nausea and vomiting. One in three patients discontinues treatment despite a 50% chance of improvement. When standard anti-nausea drugs fail, marijuana often eases patients' nausea and permits continued treatment. It can be either smoked or baked into foods.

#### MARIJUANA DOESN'T JUST HELP CANCER PATIENTS

University doctors and researchers have found that marijuana is also effective in: lowering internal eye pressure associated with glaucoma, slowing the onset of blindness; reducing the pain of AIDS patients, and stimulating the appetites of those suffering malnutrition because of AIDS 'wasting syndrome'; and alleviating muscle spasticity and chronic pain due to multiple sclerosis, epilepsy, and spinal cord injuries.

When one in five Americans will have cancer, and 20 million may develop glaucoma, shouldn't our government let physicians prescribe any medicine capable of relieving suffering?

The federal government stopped supplying marijuana to patients in 1991. Now it tells patients to take Marinol, a synthetic substitute for marijuana that can cost \$30,000 a year and is often less reliable and less effective.

Marijuana is not magic. But often it is the only way to get relief. A Harvard University survey found that almost one-half of cancer doctors surveyed would prescribe marijuana to some of their patients if it were legal.

#### IF DOCTORS CAN PRESCRIBE MORPHINE, WHY NOT MARIJUANA?

Today, physicians are allowed to prescribe powerful drugs like morphine and codeine. It doesn't make sense that they cannot prescribe marijuana, too.

Proposition 215 allows physicians to recommend marijuana in writing or verbally, but if the recommendation is verbal, the doctor can be required to verify it under oath. Proposition 215 would also protect patients from criminal penalties for marijuana, but ONLY if they have a doctor's recommendation for its use.

#### MARIJUANA WILL STILL BE ILLEGAL FOR NON-MEDICAL USE

Proposition 215 DOES NOT permit non-medical use of marijuana. Recreational use would still be against the law. Proposition 215 does not permit anyone to drive under the influence of marijuana.

Proposition 215 allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws.

Proposition 215 is based on legislation passed twice by both houses of the California Legislature with support from Democrats and Republicans. Each time, the legislation was vetoed by Governor Wilson.

Polls show that a majority of Californians support Proposition 215. Please join us to relieve suffering and protect your rights. VOTE YES ON PROPOSITION 215.

**RICHARD J. COHEN, M.D.**

*Consulting Medical Oncologist (Cancer Specialist),  
California-Pacific Medical Center, San Francisco*

**IVAN SILVERBERG, M.D.**

*Medical Oncologist (Cancer Specialist), San Francisco*

**ANNA T. BOYCE**

*Registered Nurse, Orange County*

### Rebuttal to Argument in Favor of Proposition 215

**AMERICAN CANCER SOCIETY SAYS:** "... *Marijuana is not a substitute for appropriate anti-nausea drugs for cancer chemotherapy and vomiting. [We] see no reason to support the legalization of marijuana for medical use.*"

Thousands of scientific studies document the harmful physical and psychological effects of smoking marijuana. It is not compassionate to give sick people a drug that will make them sicker.

#### SMOKING MARIJUANA IS NOT APPROVED BY THE FDA FOR ANY ILLNESS

Morphine and codeine are FDA approved drugs. The FDA has not approved smoking marijuana as a treatment for any illness.

Prescriptions for easily abused drugs such as morphine and codeine must be in writing, and in triplicate, with a copy sent to the Department of Justice so these dangerous drugs can be tracked and kept off the streets. Proposition 215 requires absolutely no written documentation of any kind to grow or smoke marijuana. It will create legal loopholes that would protect drug dealers and growers from prosecution.

#### PROPOSITION 215 IS MARIJUANA LEGALIZATION—NOT MEDICINE

- Federal laws prohibit the possession and cultivation of marijuana. Proposition 215 would encourage people to break federal law.
- Proposition 215 will make it legal for people to smoke marijuana in the workplace . . . or in public places . . . next to your children.

**NOT ONE MAJOR DOCTOR'S ORGANIZATION,  
LAW ENFORCEMENT ASSOCIATION OR  
DRUG EDUCATION GROUP SUPPORTS  
PROPOSITION 215—IT'S A SCAM CONCOCTED AND  
FINANCED BY DRUG LEGALIZATION ADVOCATES!  
PLEASE VOTE NO.**

**SHERIFF BRAD GATES**

*Past President, California  
State Sheriffs' Association*

**ERIC A. VOTH, M.D., F.A.C.P.**

*Chairman, The International Drug Strategy Institute*

**GLENN LEVANT**

*Executive Director, D.A.R.E. America*



## Medical Use of Marijuana. Initiative Statute.

# 215

### Argument Against Proposition 215

#### READ PROPOSITION 215 CAREFULLY • IT IS A CRUEL HOAX

The proponents of this deceptive and poorly written initiative want to exploit public compassion for the sick in order to legalize and legitimize the widespread use of marijuana in California.

Proposition 215 DOES NOT restrict the use of marijuana to AIDS, cancer, glaucoma and other serious illnesses.

READ THE FINE PRINT. Proposition 215 legalizes marijuana use for "any other illness for which marijuana provides relief." This could include stress, headaches, upset stomach, insomnia, a stiff neck . . . or just about anything.

#### NO WRITTEN PRESCRIPTION REQUIRED

##### • EVEN CHILDREN COULD SMOKE POT LEGALLY!

Proposition 215 does not require a written prescription. Anyone with the "oral recommendation or approval by a physician" can grow, possess or smoke marijuana. No medical examination is required.

THERE IS NO AGE RESTRICTION. Even children can be legally permitted to grow, possess and use marijuana . . . without parental consent.

#### NO FDA APPROVAL • NO CONSUMER PROTECTION

Consumers are protected from unsafe and impure drugs by the Food and Drug Administration (FDA). This initiative makes marijuana available to the public without FDA approval or regulation. Quality, purity and strength of the drug would be unregulated. There are no rules restricting the amount a person can smoke or how often they can smoke it.

THC, the active ingredient in marijuana, is already available by prescription as the FDA approved drug Marinol.

Responsible medical doctors wishing to treat AIDS patients, cancer patients and other sick people can prescribe Marinol right now. They don't need this initiative.

#### NATIONAL INSTITUTE OF HEALTH, MAJOR MEDICAL GROUPS SAY NO TO SMOKING MARIJUANA FOR MEDICINAL PURPOSES

The National Institute of Health conducted an extensive study on the medical use of marijuana in 1992 and concluded that smoking marijuana is *not* a safe or more effective treatment than Marinol or other FDA approved drugs for people with AIDS, cancer or glaucoma.

The American Medical Association, the American Cancer Society, the National Multiple Sclerosis Society, the American Glaucoma Society and other top medical groups have *not* accepted smoking marijuana for medical purposes.

#### LAW ENFORCEMENT AND DRUG PREVENTION LEADERS SAY NO TO PROPOSITION 215

The California State Sheriffs Association  
The California District Attorneys Association  
The California Police Chiefs Association  
The California Narcotic Officers Association  
The California Peace Officers Association  
Attorney General Dan Lungren

say that Proposition 215 will provide new legal loopholes for drug dealers to avoid arrest and prosecution . . .

Californians for Drug-Free Youth  
The California D.A.R.E. Officers Association  
Drug Use Is Life Abuse  
Community Anti-Drug Coalition of America  
Drug Watch International

say that Proposition 215 will damage their efforts to convince young people to remain drug free. It sends our children the false message that marijuana is safe and healthy.

#### HOME GROWN POT • HAND ROLLED "JOINTS" • DOES THIS SOUND LIKE MEDICINE?

This initiative allows unlimited quantities of marijuana to be grown anywhere . . . in backyards or near schoolyards without any regulation or restrictions. This is not responsible medicine. It is marijuana legalization.

#### VOTE NO ON PROPOSITION 215

JAMES P. FOX  
President, California District Attorneys Association  
MICHAEL J. MEYERS, M.D.  
Medical Director, Drug and Alcohol Treatment  
Program, Brotman Medical Center, CA  
SHARON ROSE  
Red Ribbon Coordinator, Californians for Drug-Free  
Youth, Inc.

### Rebuttal to Argument Against Proposition 215

#### SAN FRANCISCO DISTRICT ATTORNEY TERENCE HALLINAN SAYS . . .

Opponents aren't telling you that law enforcement officers are on both sides of Proposition 215. I support it because I don't want to send cancer patients to jail for using marijuana.

Proposition 215 does not allow "unlimited quantities of marijuana to be grown anywhere." It only allows marijuana to be grown for a patient's personal use. Police officers can still arrest anyone who grows too much, or tries to sell it.

Proposition 215 doesn't give kids the okay to use marijuana, either. Police officers can still arrest anyone for marijuana offenses. Proposition 215 simply gives those arrested a defense in court, *if they can prove they used marijuana with a doctor's approval.*

#### ASSEMBLYMAN JOHN VASCONCELLOS SAYS . . .

Proposition 215 is based on a bill I sponsored in the California Legislature. It passed both houses with support from both parties, but was vetoed by Governor Wilson. If it were the kind of irresponsible legislation that opponents claim it was, it would not have received such

widespread support.

#### CANCER SURVIVOR JAMES CANTER SAYS . . .

Doctors and patients should decide what medicines are best. Ten years ago, I nearly died from testicular cancer that spread into my lungs. Chemotherapy made me sick and nauseous. The standard drugs, like Marinol, didn't help.

Marijuana blocked the nausea. As a result, I was able to continue the chemotherapy treatments. Today I've beaten the cancer, and no longer smoke marijuana. I credit marijuana as part of the treatment that saved my life.

TERENCE HALLINAN  
San Francisco District Attorney  
JOHN VASCONCELLOS  
Assemblyman, 22nd District  
Author, 1995 Medical Marijuana Bill  
JAMES CANTER  
Cancer survivor, Santa Rosa



asserting as a defense or otherwise relying on any of the antitrust law exemptions contained in Section 16770 of the Business and Professions Code, Section 1342.6 of the Health and Safety Code, or Section 10133.6 of the Insurance Code, in any civil or criminal action against it for restraint of trade, unfair trading practices, unfair competition or other violations of Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code.

(d) The remedies contained in this chapter are in addition and cumulative to any other remedies provided by statute or common law.

#### Article 14. Severability

1399.960. (a) If any provision, sentence, phrase, word, or group of words in this chapter, or their application to any person or circumstance, is held to be invalid, that invalidity shall not affect other provisions, sentences, phrases, words, groups of words or applications of this chapter. To this end, the provisions, sentences, phrases, words and groups of words in this chapter are severable.

(b) Whenever a provision, sentence, phrase, word, or group of words is held to be in conflict with federal law, that provision, sentence, phrase, word, or group of words shall remain in full force and effect to the maximum extent permitted by federal law.

#### Article 15. Amendment

1399.965. (a) This chapter may be amended only by the Legislature in ways that further its purposes. Any other change in the provisions of this chapter shall be approved by vote of the people. In any judicial proceeding concerning a legislative amendment to this chapter, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this chapter.

(b) No amendment shall be deemed to further the purposes of this chapter unless it furthers the purpose of the specific provision of this chapter that is being amended.

#### Article 16. Definitions

1399.970. The following definitions shall apply to this chapter:

(a) "Affiliated enterprise" means any entity of any form that is wholly owned, controlled, or managed by a health care business, or in which a health care business holds a beneficial interest of at least twenty-five percent (25%) either through ownership of shares or control of memberships.

(b) "Available for public inspection" means available at the facility or agency during regular business hours to any person for inspection or copying, or both, with any charges for the copying limited to the reasonable cost of reproduction and, when applicable, postage.

(c) "Caregiver" or "licensed or certified caregiver" means health personnel licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, including a person licensed under any initiative act referred to therein, health personnel regulated by the State Department of Health Services, and health personnel regulated by the Emergency Medical Services Authority.

(d) "Health care business" means any health facility, organization, or institution of any kind that provides, or arranges for the provision of, health services, regardless of business form and whether or not organized and operating as a profit or nonprofit, tax-exempt enterprise, including all of the following:

(1) Any health facility defined herein.

(2) Any health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code.

(3) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

(5) Any provider of emergency ambulance services, limited advanced life support, or advanced life support services.

(6) Any preferred provider organization, independent practice association, or other organized group of health professionals with 50 or more employees in the aggregate contracting for the provision or arrangement of health services.

(e) "Health care consumer" or "patient" means any person who is an actual or potential recipient of health services.

(f) "Health care services" or "health services" means health services of any kind, including, but not limited to, diagnostic tests or procedures, medical treatments, nursing care, mental health, and other health care services as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(g) "Health facility" means any licensed facility of any kind at which health services are provided, including, but not limited to, those facilities defined in Sections 1250, 1200, 1200.1, and 1204, and home health agencies, as defined in Section 1374.10, regardless of business form, and whether or not organized and operating as a profit or nonprofit, tax-exempt or non-exempt enterprise, and including facilities owned, operated, or controlled, by governmental entities, hospital districts, or other public entities.

(h) "Private health care business" means any health care business as defined herein except governmental entities, including hospital districts and other public entities. "Private health care business" shall include any joint venture, partnership, or any other arrangement or enterprise involving a private entity or person in combination or alliance with a public entity.

(i) "Health insurer" means any of the following:

(1) Any health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code.

(2) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(3) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

### Proposition 215: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been 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.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

### Proposition 216: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

Division 2.4 (commencing with Section 1796.01) is added to the Health and Safety Code to read:

##### DIVISION 2.4. THE PATIENT PROTECTION ACT

##### CHAPTER 1. PURPOSE AND INTENT

1796.01. This division shall be known as the "Patient Protection Act." The people of California find and declare all of the following:

(a) No health maintenance organization (HMO) or other health care business should be able to prevent doctors, registered nurses, and other health care professionals from informing patients of any information that is relevant to their health care.

(b) Doctors, registered nurses, and other health care professionals should be able to advocate for patients without fear of retaliation from HMOs and other health care businesses.

(c) Health care businesses should not create conflicts of interest that force doctors to choose between increasing their pay or giving their patients medically appropriate care.

(d) Patients should not be denied the medical care their doctor recommends just because

their HMO or health insurer thinks it will cost too much.

(e) HMOs and other health insurers should establish publicly available criteria for authorizing or denying care that are determined by appropriately qualified health professionals.

(f) No HMO or other health insurer should be able to deny a treatment recommended by a patient's physician unless the decision to deny is made by an appropriately qualified health professional who has physically examined the patient.

(g) All doctors and health care professionals who are responsible for determining in any way the medical care that a health plan provides to patients should be subject to the same professional standards and disciplinary procedures as similarly licensed health professionals who provide direct care for patients.

(h) No hospital, nursing home, or other health facility should be allowed to operate unless it maintains minimum levels of safe staffing by doctors, registered nurses, and other health professionals.

(i) The quality of health care available to California consumers will suffer if health becomes a big business that cares more about making money than it cares about taking care of patients.

(j) It is not fair to consumers when health care executives are paid millions of dollars in salaries and bonuses while consumers are being forced to accept more and more restrictions on their health care coverage.

(k) The premiums paid to health insurers should be spent on health care services for

# EXHIBIT B



AGENDA ITEM NO. 3:00pm  
COUNCIL MEETING 03/20/2014  
APPROVED BY

DEPARTMENT DIRECTOR CITY MANAGER 

DATE: March 20, 2014

FROM: JERRY P. DYER, Chief of Police  
Police DepartmentBY: MICHAEL W. BROGDON, Lieutenant  
Police Department - Investigative Services Division

SUBJECT: Amend the Fresno City Municipal Code to Repeal Article 21 of Chapter 12, and add Article 21 of Chapter 12, prohibiting the cultivation of Marijuana in All Zone Districts within the city of Fresno

## RECOMMENDATIONS

Staff recommends that the City Council approve the amendment to the current Municipal Code by repealing Article 21 of Chapter 12, and adding Article 21 of Chapter 12, prohibiting the cultivation of marijuana in all zone districts within the city of Fresno.

## EXECUTIVE SUMMARY

On June 28, 2012, Council adopted Bill Number B-12, Ordinance Number 2012-13, which added Article 21 to Chapter 12 to the Fresno Municipal Code. Section 12-2103 prohibited the outdoor cultivation of marijuana and did not place a prohibition on the indoor cultivation and/or within an outdoor fully-enclosed and secured structure, approved by special permit. However, this past year, 317 marijuana grow complaints (some indoor operations) were investigated by the Police Department's Narcotics Section, with approximately 5,031 pounds of marijuana being seized. Since the outdoor cultivation of marijuana is currently prohibited, adopting this ordinance would prohibit all indoor and outdoor cultivation of marijuana, and thus, minimize the crime and violence which is exposing the surrounding residents to a higher risk of harm.

## BACKGROUND

On June 28, 2012, the Council adopted Bill Number B-12, Ordinance Number 2012-13, which added Article 21 to Chapter 12 of the Fresno Municipal Code. Section 12-2103 prohibited the outdoor cultivation of marijuana and did not place a prohibition on indoor cultivations and/or within an outdoor fully-enclosed and secured structure, approved by special permit.

This past year, 317 marijuana grow complaints were investigated by the Fresno Police Department's Narcotics Section with approximately 5,031 pounds of marijuana being seized.



A number of marijuana cultivations investigated were indoor operations. Severe damage to these residences was found; especially in the large indoor grows. Carpets removed to the bare floor, windows boarded up, and walls removed or modified. Large grow lamps suspended from the walls and ceilings creating high levels of heat with dangerous electrical alterations, both inside the residence and at the service meter were found. Fans and ventilation ducts were made through the walls and to the roofs to vent humidity and heat. Noxious odors were common both inside and outside the residences.

Marijuana grows attract crime and associated violence. In 2013, we had four (4) armed home invasion robberies related to the cultivation of marijuana. The cultivation of marijuana and/or proceeds of marijuana sales were the primary motive for these robberies. Countless other grows have gone unreported but were later discovered as the result of undercover operations. These indoor grows expose the surrounding residents to a higher risk of harm, especially in cases when an innocent home owner is accidentally targeted.

The State of California provides a limited criminal defense to the cultivation, possession, and use of marijuana for medical purposes. This was created through the adoption of the Compassionate Use Act (CUA). However, the CUA does not address the land use or other impacts that are caused by the cultivation of marijuana.

The Medical Marijuana Program Act (MMPA) establishes a statewide identification program that provides a limited criminal defense to the transportation, processing, administering, and distributing of marijuana to qualified patients, their primary caregivers, and persons with identification cards. However, this act does not create the right to cultivate marijuana.

The Federal Controlled Substance Act (FCSA) makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense marijuana. The FCSA contains no statutory exemption for the possession of marijuana for medical purposes.

The City has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses and in preserving the peace and quiet of the neighborhoods in which marijuana is currently grown. The outdoor cultivation of marijuana is currently prohibited. Adopting this ordinance would prohibit all indoor and outdoor cultivation of marijuana.

A violation of the new ordinance shall be prosecuted by the Fresno City Attorney through the civil enforcement process. The administrative citation penalty for each and every marijuana plant cultivated in violation of this article shall be one thousand dollars (\$1,000.00) per plant, plus one hundred dollars (\$100.00) per plant, per day the plant remains unabated past the abatement deadline set forth in the administrative citation. Any property upon which a violation of this article is found shall be subject to immediate abatement by the City.



In addition to any administrative penalty assessed for violation of this article, any person found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, calculated to recover the total costs incurred by the City in enforcing this article.

Upon final passage, this ordinance shall be immediately enforceable as to the indoor and outdoor cultivation of marijuana. Any person legally cultivating marijuana indoors prior to the effective date of Article 21 of Chapter 12 of the municipal code, shall have one hundred and twenty (120) days from the effective date of this article to harvest their crop of marijuana. After the one hundred and twenty day grace period, all of the provisions of Article 21 of Chapter 12 shall be immediately enforceable.

### **ENVIRONMENTAL FINDINGS**

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined that there is no possibility that this project may have a significant effect upon the environment because the outdoor cultivation of marijuana is currently a prohibited use, and this ordinance merely prohibits additional future cultivation of marijuana indoors after the current crop year. This will not result in a substantial or potentially substantial adverse change in any of the physical conditions effected by this prohibition, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Instead, the prohibition is anticipated to have positive effects on the environment, including helping to reduce water consumption and eliminate offensive odors. Therefore, this project is not subject to CEQA.

### **FISCAL IMPACT**

The fiscal impact will include the use of existing staff to enforce the ordinance, which would include staff from the Police Department, Code Enforcement, and the City Attorney's Office. The ordinance does include specific fine amounts for initial violations and unabated plants past the abatement deadline. No revenue estimates are projected should those penalties be assessed and collected.

JPD:MFB  
03/20/14

Attachment: Marijuana Cultivation Ordinance



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

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

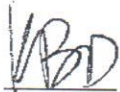
AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, REPEALING ARTICLE 21 OF  
CHAPTER 12 OF, AND ADDING ARTICLE 21 OF  
CHAPTER 12 TO, THE FRESNO MUNICIPAL CODE  
RELATING TO MARIJUANA CULTIVATION

WHEREAS, the Council hereby finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the city's jurisdiction. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes and nuisance impacts to neighboring properties from the strong and potentially noxious odors from the plants, and increased crime; and

WHEREAS, according to the Chief of Police, marijuana grows have been operating in the city for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and arrests for violation of both state and federal laws, including seizure of illegal firearms. Marijuana grows attract crime and associated violence. They are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance; and

WHEREAS, marijuana cultivation in the city poses a threat to the public peace, health and safety. Many marijuana grows have emerged in the city which are very visible to the public, and easily accessible to the public, including children and youths.

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





There is a threat of violent crime due to the size, location, and monetary value of these mature marijuana grows; and

WHEREAS, it is acknowledged that the voters of the State of California have provided a limited criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act in 1996 pursuant to Proposition 215 and codified as Health and Safety Code section 11362.5. The Compassionate Use Act (CUA) does not address the land use or other impacts that are caused by the cultivation of marijuana; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers. The scope of the Medical Marijuana Program Act (MMPA) commencing with Health and Safety Code section 11362.7, is also limited in that it establishes a statewide identification program and affords qualified patients, persons with identification cards and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana; and

WHEREAS, neither the CUA, MMPA, nor the California Constitution create a right to cultivate medical marijuana; and

WHEREAS, it is critical to note that neither Act abrogates the city's powers to regulate for public health, safety and welfare. Health and Safety Code 11362.5(b)(2) provides that the CUA does not supersede any legislation intended to prohibit conduct that endangers others. In addition, Health and Safety Code 11352.83 authorizes cities and counties to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the Council finds that neither the CUA nor the MMPA preempts the city's exercise of its traditional police powers in enacting land use and zoning regulations, as well as legislation for preservation of public health, safety and welfare, such as this zoning ordinance prohibiting cultivation of marijuana within the city; and

WHEREAS, marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. 801, et seq., and is classified 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 its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes. The city does not wish to be in violation of federal law; and

WHEREAS, the city has a compelling interest in protecting the public health, safety and welfare of its residents and businesses, and in preserving the peace and quiet of the neighborhoods in which marijuana is currently grown; and

WHEREAS, staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined that there is no possibility that this project may have a significant effect on the environment because the outdoor cultivation of marijuana is currently a prohibited use, and this ordinance merely prohibits additional future cultivation of marijuana indoors after the current crop year. This will not result in a substantial, or potentially substantial, adverse



change in any of the physical conditions affected by this prohibition, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Instead, the prohibition is anticipated to have positive effects on the environment, including helping to reduce water consumption and to eliminate offensive odors. Therefore, this project is not subject to CEQA.

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

SECTION 1. Article 21 of Chapter 12 of the Fresno Municipal Code is repealed.

SECTION 2. Article 21 is added to Chapter 12 of the Fresno Municipal Code to read:

#### ARTICLE 21

##### CULTIVATION OF MARIJUANA

- Section 12-2101. Purpose and Intent.
- 12-2102. Relationship to Other Laws.
- 12-2103. Definitions.
- 12-2104. Prohibition of Marijuana Cultivation.
- 12-2105. Violation and Penalty.
- 12-2106. Severability.
- 12-2107. Applicability.

SECTION 12-2101. PURPOSE AND INTENT. The purpose of this article is to prohibit the cultivation of marijuana in order to protect the public peace, health, safety and general welfare of the citizens of the city.

SECTION 12-2102. RELATIONSHIP TO OTHER LAWS. This article is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this article would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. This article shall be interpreted to be compatible and consistent with federal, county,

and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this article will supersede any other provisions of this code found to be in conflict.

SECTION 12-2103. DEFINITIONS. For purposes of this article, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning and application of words and phrases used in this article:

(a) "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

(b) "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, and includes medical marijuana.

(c) "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.

(d) "Collective, cooperative or dispensary" means a collective, cooperative, dispensary, operator, establishment, provider, association or similar entity that cultivates, distributes, delivers or processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the Compassionate Use Act and Medical Marijuana Program Act.

(e) "Primary caregiver" means a primary caregiver as defined in Health and Safety Code section 11362.7.



(f) "Qualified patient" means a qualified patient as defined in Health and Safety Code section 11362.7.

SECTION 12-2104. PROHIBITION OF MARIJUANA CULTIVATION.

Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city.

SECTION 12-2105. VIOLATION AND PENALTY.

(a) A violation of this article shall be prosecuted by the City Attorney through the civil enforcement process, including injunctive relief, as set forth in Section 1-308 of this code. Each day a person is in violation of this article shall be considered a separate violation.

(b) The administrative citation penalty for each and every marijuana plant cultivated in violation of this article shall be One Thousand Dollars (\$1,000) per plant, plus One Hundred Dollars (\$100) per plant per day the plant remains unabated past the abatement deadline set forth in the administrative citation.

(c) Any property upon which a violation of this article is found shall be subject to immediate abatement by the city.

(d) In addition to any administrative penalty assessed for violation of this article, any person found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, calculated to recover the total costs incurred by the city in enforcing this article.

SECTION 12-2106. 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 12-2107. APPLICABILITY. All of the provisions of this article shall be immediately enforceable as to the outdoor cultivation of marijuana. Any person legally cultivating marijuana indoors prior to the effective date of this article shall have one hundred twenty (120) days from the effective date of this article to harvest their crop of marijuana. After the one hundred twenty day (120) grace period, all the provisions of this article shall be immediately enforceable.

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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.

\* \* \* \* \*

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: \_\_\_\_\_  
Katherine B. Doerr       Date  
Supervising Deputy

KBD:elb [63853elb/kbd] Ord. 1/30/14

# **EXHIBIT C**



BEFORE THE BOARD OF SUPERVISORS

FOR THE COUNTY OF FRESNO

STATE OF CALIFORNIA

ORDINANCE NO. 14-001

AN ORDINANCE DELETING CHAPTER 6.60 OF TITLE 6, RELATING TO MEDICAL MARIJUANA LICENSES; DELETING AND REPLACING IN ITS ENTIRETY CHAPTER 10.60 OF TITLE 10, RELATING TO MEDICAL MARIJUANA; AND ADDING CHAPTERS 10.62 AND 10.64. OF TITLE 10, RELATING TO IMPERMISSABLE CULTIVATION OF MEDICAL MARIJUANA AS PUBLIC NUISANCE AND ADMINISTRATIVE PENALTIES FOR IMPERMISSABLE CULTIVATION OF MEDICAL MARIJUANA .

The Board of Supervisors of the County of Fresno ordains as follows:

**SECTION 1:** The Board of Supervisors of the County of Fresno finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the "Medical Marijuana

Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.

D. In 2011, Assembly bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives.

E. This chapter is enacted, consistent with Health and Safety Code section 11362.7 et seq., to protect the public health, safety and welfare of Fresno County residents in relation to the legal operation and location of medical marijuana collectives.

F. According to the Fresno County Sheriff, medical marijuana grows have been operating in Fresno County for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Medical marijuana grows attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other businesses located nearby. Medical marijuana grows are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance.

G. We concur with the Fresno County Sheriff, that medical marijuana cultivation in Fresno County poses a threat to the public peace, health and safety. Many medical marijuana grows have emerged in Fresno County which



are very visible to the public, and easily accessible by the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. There is a threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows.

H. Medical marijuana grows create a nuisance that threatens the safety and property of nearby land owners and their families. If medical marijuana grows are not regulated, large quantities of illegal marijuana will be introduced into the local market in the near future.

I. Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.

J. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.

K. Fresno County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and in preserving the peace and quiet of the neighborhoods in which medical marijuana grows.

L. 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 or to license any activity that is prohibited under the act except as mandated by state law.

M. Nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law.

**SECTION 2:** Chapter 6.60 Medical Marijuana Licenses, Sections 6.60.010 through 6.60.100, of Title 6 of the Ordinance Code of the County of Fresno is hereby deleted in its entirety.

**SECTION 3:** Chapter 10.60 Medical Marijuana, of Title 10 of the Ordinance Code is deleted in its entirety and replaced with the following:

**"Chapter 10.60 Medical Marijuana**

**10.60.010 Purpose and intent.**

It is the purpose and intent of this chapter to prohibit cultivation of medical marijuana in order to preserve the public peace, health, safety and general welfare of the citizens of Fresno County. Additionally, it is the purpose and intent of this chapter to continue in effect Fresno County's prohibition of medical



marijuana dispensaries and limitations on places where medical marijuana can be consumed.

**10.60.020 Relationship to other laws.**

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the board that this chapter shall be interpreted to be compatible and consistent with federal, county, and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this code found to be in conflict.

**10.60.030 Definitions.**

For purposes of this chapter, these words and phrases shall be defined as follows:

- A. "County" means the County of Fresno or the unincorporated area of the County of Fresno as required by the context.
- B. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.
- C. "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code sections 11362.7 et seq.

D. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

E. A "Medical marijuana collective" or "dispensary" means any operation, including a store-front facility or structure, mobile facility, or delivery service, wherein medical marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to primary caregivers, and qualified patients, as defined by this chapter.

A "medical marijuana collective" or "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 Section 11362.7 et seq.

F. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.



G. "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.

**10.60.040 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.

**10.60.050 Dispensary as a prohibited use.**

A dispensary is a prohibited use in all zone districts in the County.

**10.60.060 Medical marijuana cultivation regulations.**

Medical marijuana cultivation is prohibited in all zone districts in the County.

**10.60.070 Prohibited medical marijuana cultivation declared a public nuisance.**

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this chapter, within the County is declared to be a public nuisance and each person or responsible party is subject to abatement proceedings under Chapter 10.62.

**10.60.080 Penalties for violation.**

A. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to the penalties as set forth in Chapter 1.12, as well as the administrative penalties as set forth in Chapter 10.64. Violators shall be subject to any other enforcement remedies available to the County under

any applicable state or federal statute or pursuant to any other lawful power the county may possess.

B. Each day a violation is allowed to continue and every violation of the Chapter shall constitute a separate violation and shall be subject to all remedies.

C. In the event any civil suit or action is brought by the County to enforce the provisions of this chapter, the person responsible for such violation shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees.

**10.60.090 Severability.**

If any part or subsection 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:** Chapter 10.62 Abatement of Public Nuisances Created By Cultivation of Medical Marijuana In Violation of Chapter 10.60, of Title 10, is hereby added to read in its entirety as follows:

**"Chapter 10.62 Abatement of Public Nuisances Created By  
Cultivation of Medical Marijuana In Violation of Chapter 10.60.**

**10.62.010 Purpose.**

This Chapter is enacted pursuant to Government Code section 25845 and complies with Health and Safety Code section 17980. Notwithstanding any other provision of this code, whenever a condition or use exists upon private land which is a public nuisance, the procedures set out in this chapter may be used as



an alternative to any other way or proceeding to abate or manner of obtaining abatement which is set forth in this code.

**10.62.020 Definitions.**

As used in this chapter:

- A. "Days" means calendar days.
- B. "Property" means and includes property, structures and the abutting half of the street, and/or alley, between the sidelines thereof as extended.
- C. "Public nuisance" means any cultivation of marijuana in violation of Chapter 10.60 of this Ordinance Code.
- D. "Public official" means the building official, code enforcement official or Sheriff, or any other individual or body appointed by the Board of Supervisors to enforce codes and which is authorized to administer this chapter.
- E. "Responsible party" means an individual, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other entity whatsoever whose action or actions caused or contributed to violations of codes specified in this chapter.

**10.62.030 Investigation.**

The public official, upon receipt of information leading him/her to believe that a public nuisance, subject to this Chapter, exists upon private property in the unincorporated area of the County, shall make a reasonable investigation of the facts and if possible inspect the property to determine whether or not a public nuisance exists. Inspections may include photographing the conditions or

obtaining samples or other physical evidence. If an owner, occupant or agent refuses permission to enter or inspect, the public official may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure Section 1822.50 through Section 1822.59.

**10.62.040 Abatement order.**

A. Upon making a reasonable determination that a public nuisance exists, the public official shall notify the property owner(s), as such persons' names appear on the last equalized assessment roll, and any lessees that a public nuisance exists upon such persons' property. Notice shall be given by means of first class mail postage prepaid. If the address of any such person is unknown to the public official, then a copy shall be posted on the property. A copy of the notice shall also be sent by first class mail postage prepaid to the last known address of any responsible party if the public official determines that such responsible party directly or indirectly contributed to the condition creating the nuisance.

B. The notice shall describe the use or condition which constitutes the public nuisance, and the notice shall also state what repair or other work is required in order to abate the nuisance.

C. The notice shall order that the uses or conditions constituting the nuisance be abated within a reasonable time as determined by the public official, normally being fifteen (15) days from the date such notice is mailed.



D. The notice shall contain instructions to the property owner describing procedures for scheduling a hearing for the purpose of presenting information as to why the property should not be considered a public nuisance.

E. The notice shall also state that if the work is not completed within the number of days specified on the notice, or hearing has not been requested in accordance with section 10.62.070, the County may abate the nuisance without further notification and the property owner may be responsible for all costs associated with the investigation and abatement of the public nuisance.

F. The notice shall also state that if the property owner fails to request a hearing, all rights to appeal any action of the County to abate the nuisance are waived.

**10.62.050 Immediate threat to public health or safety.**

A. The public official, upon making a finding that an immediate threat or danger exists to the health, safety or welfare of the occupants or the public, may order a summary abatement of the nuisance.

B. Upon such finding, the public official may require immediate action on the part of the property owner or lessee to eliminate the hazardous condition.

1. The public official shall make a reasonable attempt to notify the lessees and owners of the property or responsible party of the dangers which require the immediate vacation, repair, cleanup and/or securing of the property or structures thereof, either by telephone, or by personally visiting the premises; and

2. If the imminently dangerous condition can be substantially relieved by the performance of minor repairs, disconnection of certain utility services, or other acts, then the public official may perform or direct such acts of work without the prior consent of, or notice to, the owners, occupants, or responsible party; and

3. If such danger cannot be substantially relieved by such work and upon the failure or refusal of the occupants to voluntarily vacate such premises, then the public official may personally disconnect the electrical, gas and other utility services to such premises or may request the appropriate utility companies to do so; and

4. If the public official finds that an immediate threat to public health, safety or welfare exists, and that it is unhealthy or hazardous to delay abatement action, he/she may order County staff or contractors to abate the condition. Abatement may be, but is not limited to, clean-up and disposal of rubbish or other materials which threaten public health; and

5. The property owner, lessee and/or responsible party shall be liable for all costs associated with this abatement, including administrative, labor, material and other costs; and

6. The public official shall post warnings to all persons not to enter the premises stating the reasons therefor.

**10.62.060 Request for a hearing regarding abatement order.**

A. A hearing regarding an abatement order may be requested by filing a written request for a hearing with the main office of the public official whose

department issued the abatement order prior to such date set for the abatement of the nuisance.

B. The filing of such request for hearing shall stay the effectiveness of the order of abatement until such time as the case has been decided by the board of supervisors.

C. If a request for a hearing is not filed within the number of days to abate the nuisance as specified on the abatement order, the public official may order the work to be performed.

**10.62.070 Hearing notice.**

A. Upon receipt of a request for hearing, filed in accordance with Section 10.62.060, the public official shall schedule a hearing before the Board of Supervisors. Notice of the hearing shall be sent by first class mail postage prepaid to the persons filing the request and to those persons identified under Section 10.62.040(A).

B. The notice shall state the date, time and place of the hearing (which in no event shall be sooner than ten (10) days from the date of mailing and posting such notice unless mutually agreed to by the property owner or responsible party and the public official), the specific conditions or uses which constitute the public nuisance, and shall direct the owner(s) and/or lessees to appear and show cause why the specified condition or use should not be declared a public nuisance and abated.

C. The failure of any property owner, lessee, responsible party, or other person to receive any notice required to be given or posted pursuant to the



provisions of this chapter shall not affect in any manner the validity of any proceedings taken thereunder.

**10.62.080 Hearing.**

A. At the time fixed in the notice, the Board of Supervisors shall proceed to hear testimony from any interested person regarding the specified condition or use deemed by the public official to be a public nuisance, the estimated cost of its reconstruction, repair, removal or other work, and any other matter which the Board of Supervisors may deem pertinent thereto.

B. Upon the conclusion of the hearing, the Board of Supervisors will make a determination based on the evidence presented at the hearing. In the event that the Board of Supervisors declares the condition or use is a public nuisance, the Board may direct the owner(s) to abate the same within thirty (30) days after posting and mailing and impose an administrative fine as provided for in Chapter 10.64.

C. After the determination of the Board directing the abatement of a public nuisance, the public official shall conspicuously post a copy thereof on the building, structure or other property declared a public nuisance and shall mail a copy to the owner(s) thereof as well as to the lessees and to the mortgagees of record and trust deed beneficiaries of record.

D. The Board of Supervisors may grant reasonable extensions of time to abate the nuisance upon good cause therefor being shown.

E. Any interested person being aggrieved by the determination and final actions of the Board of Supervisors in the public nuisance abatement

proceeding may, within thirty (30) days after the date of notice to the owner(s) of the decision, bring an action in a court of competent jurisdiction to contest the validity of the proceeding.

**10.62.090 Failure of property owner to abate.**

If the property owner, lessee or other responsible party fails to abate the nuisance within the time specified by the Board of Supervisors, or the public official, and is not granted a time extension, the public official, upon authorization of the department head, is authorized to secure, remove, demolish, raze or otherwise abate the nuisance at the expense of the owner(s).

**10.62.100 Sale of materials.**

Any materials obtained from the nuisance abatement may be sold by the County at public sale to the highest responsible bidder after not less than ten (10) days' notice of the intended sale, published at least once in a newspaper of general circulation in the county, either before or after the nuisance is abated. The County may allow contractors to consider the salvage value of the materials in the preparation of abatement bids.

**10.62.110 Accounting of abatement expenses.**

The public official shall keep an itemized account of the expenses incurred in abating the nuisance and shall deduct therefrom the amounts receivable from the sale of such materials.

**10.62.120 Abatement expenses statement – Posting.**

A. The public official shall cause to be conspicuously posted on the property from which the nuisance was abated a statement verified by the public

official in charge of abating the nuisance showing the gross and net expenses of abatement, together with a notice of the time and place that the statement will be submitted to the Board of Supervisors for approval and confirmation.

B. At such time and place the Board of Supervisors shall consider objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such abatement work, and any other interested person. A copy of the statement and notice shall be mailed to owner(s) and lessees in the manner prescribed in section 10.62.050. The time of submitting the statement to the Board of Supervisors for confirmation shall be not less than ten (10) days from the date of posting and mailing the statement notice.

**10.62.130 Statement of expense – Hearing.**

At the time fixed for hearing objections or protests to the statement of expense the Board of Supervisors shall consider the statement together with any objections or protests which may be raised. The Board of Supervisors may make such revision, correction or modification in such statements as it may deem just. The Board's decisions on the statement, protests and objections shall be final and conclusive. Notice of the Board's decision shall be mailed to owner(s) and lessees in accordance with the provisions of Section 10.62.050.

**10.62.140 Collection of unrecovered costs.**

A. In the event that the cost of abating the nuisance exceeds the proceeds received from the sale of materials, such unrecovered costs, if not paid within ten (10) days after the board's decision, shall constitute a special assessment on the real property from which the nuisance was abated.



B. The assessment may be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and the same procedure for sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes shall be applicable to such special assessment, except that if any real property to which such cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attached thereon prior to the date on which the first installment of such taxes would become delinquent, then such cost of abatement shall not result in a lien against such real property but instead shall be transferred to the unsecured roll for collection.

C. The public official shall file a notice of a lien in the office of the recorder of the county in an amount no greater than the total cost of abatement appearing in the statement of expense earlier approved by the board of supervisors. The notice of lien shall be in a form approved by county counsel

D. From and after the date of recording the notice of lien, all persons shall be deemed to have notice of the contents thereof. The statute of limitations shall not run against the right of the County to enforce the payment of the lien.

E. Amounts owed to the County for abatement shall bear interest at the maximum rate allowed by law per year from the date of the abatement.

**10.62.150 Refund of excess receipts.**

In the event that the amounts received from the sale of materials exceed the expenses of razing, removing or otherwise abating the nuisance, such

excess shall be deposited with the treasurer of the County to the credit of the owner of such property or to such other person legally entitled thereto. Such excess shall be payable to the owner or other person upon production of evidence of ownership, or other interest, satisfactory to the treasurer."

**SECTION 5:** Chapter 10.64 Administrative Penalties for Public Nuisance Created By Cultivation of Medical Marijuana In Violation of Chapter 10.60, of Title 10, of the Ordinance Code of the County of Fresno is hereby added to state in its entirety as follows:

**"Chapter 10.64 Administrative Penalties for Public Nuisances  
Created By Cultivation of Medical Marijuana In Violation of Chapter 10.60.**

**10.64.010 Effect.**

This ordinance does not in any way supersede Fresno County Ordinance Code Chapter 1.12 Administrative Fines.

**10.64.020 Purpose of Administrative Penalties on Public Nuisance**

- A. This Chapter is adopted to achieve the following goals:
1. To protect the public health, safety and welfare of the communities and citizens in the County of Fresno; and
  2. To provide a method to penalize responsible parties who fail or refuse to comply with medical marijuana cultivation provisions of the Ordinance Code of Fresno County; and
  3. To minimize the expense and delay where otherwise the county must pursue responsible parties in the civil or criminal justice system.

B. The procedures established in this Chapter shall be in addition to criminal, civil or any other legal remedy established by law and available to address violations of the Ordinance Code of Fresno County (hereinafter, code).

C. Notwithstanding any other provision of this Code, whenever an act, event or condition results in violation of Chapter 10.60 of this Code, the procedures set out in this Chapter may be used to impose a penalty on violators.

#### **10.64.030 Definitions.**

As used in this chapter:

A. "Citation" or "administrative citation" means a civil citation issued pursuant to this chapter stating that there has been a violation of one or more provisions of Chapter 10.60 of this code and setting the amount of the administrative penalty to be paid by the responsible party.

B. "Days" means calendar days.

C. "Public official" means the building official, code enforcement officer, sheriff or designees, or any other individual or body appointed by the board of supervisors to enforce codes and which is authorized to administer this chapter.

D. "Responsible party" means an individual, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other entity whatsoever whose action or actions caused or contributed to violations of codes specified in this chapter.



E. "Year" means three-hundred and sixty-five (365) days.

**10.64.040 Administrative penalty.**

A. Any responsible party violating any provision of Chapter 10.60 of this code, which is a misdemeanor, that is determined to be a public nuisance may be issued an administrative citation by a public official or the Board of Supervisors in accordance with this chapter. The administrative citation penalty for each and every medical marijuana plant cultivated in violation of Chapter 10.60 shall be: (1) One Thousand Dollars (\$1,000) per plant; plus (2) One Hundred Dollars (\$100) per plan per day the plant remains unabated past the abatement deadline set forth in the administrative citation.

B. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall be subject to citation.

C. The public official may issue a citation for a violation not committed in the official's presence, if the official has determined through investigation that the responsible party did commit or is otherwise responsible for the violation.

**10.64.050 Procedures.**

A. The administrative citation shall be issued on a form containing:

1. The name and address of the property owner(s), as such persons' names appear on the last equalized assessment roll, any lessees and responsible parties and the physical address of the property or location where the violation exists or occurred;

2. A statement of the acts, events or conditions which resulted in a violation of the code, including a reference to the appropriate title and chapter and the date of occurrence of the violation(s) included within the citation;

3. The amount of the administrative penalty imposed by the citation;

4. A statement explaining how, where, to whom, and within what number of days the penalty shall be paid;

5. The number of days provided to correct the violation prior to the administrative penalty becoming effective;

6. Identification of appeal rights, including the time within which the administrative citation may be contested and how to contest the citation; and

7. The signature of the public official issuing the citation along with the date of issuance of the citation.

B. The administrative citation shall be served upon the owner of the real property, the lessee and any other responsible party. Failure of the public official to serve any party as required in this section shall not invalidate any provisions of this chapter.

C. Service of an administrative citation may be made upon the parties either by personal delivery or by first class mail postage prepaid, return receipt requested, and shall be deemed completed when it is served to the address of record of the responsible party.

D. In lieu of personally serving the parties by personal delivery or first class mail postage prepaid, service of the administrative citation and any amended or supplemental citation may be made.

1. Service may be made by substituted service, and may be accomplished as follows:

a. By leaving a copy during usual business hours with the person who is apparently in charge at the recipient's place of business, and by thereafter mailing by first class mail postage prepaid a copy to the recipient at the address where the copy was left, or

b. By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first class mail postage prepaid a copy to the recipient at the address where the copy was left; or

2. In the event the party cannot be served by first class mail postage prepaid, or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth above in subsection (D)(1) of this section upon the property manager or rental agency; or

3. Substitute service may be effected by posting the property with the administrative citation and mailing a copy of the citation by first class mail postage prepaid to the party in violation at the address of the property where the violation exists; or



4. If the party cannot be located or service cannot be effected as set forth in this section, service may be made by publication one in a newspaper of general circulation.

E. Failure of any party to receive such administrative citation shall not affect the validity of any proceedings taken under this section against any other party. Service by first class mail postage prepaid in the manner provide in this section shall be effective eon the date of mailing.

**10.64.060 Appeal of citation.**

Any person disputing the issuance of an administrative citation may contest the citation by completing a request for hearing form and returning it to the address stated on the form within fifteen (15) days from the date of issuance of the administrative citation. The time requirement for filing a request for hearing form shall be deemed jurisdictional and may not be waived. If no timely appeal is filed, the administrative citation and fee set forth therein is final.

**10.64.070 Hearing Before Board of Supervisors.**

A. The Board of Supervisors shall preside at the hearing and hear all facts and testimony presented and deemed appropriate. The hearing shall be set for a date that is not less than ten (10) days from the date of mailing and posting of the notice of hearing. The notice of hearing shall state the date, time and place of the hearing and direct the owners(s), lessees and other responsible parties to appear and show cause why the administrative fine should not be

imposed. The notice of the hearing shall be sent by first class mail postage prepaid..

B. The Board of Supervisors shall only consider evidence that is relevant to whether the violation(s) occurred and whether the recipient of the administrative citation has caused or maintained the violation(s) on the date(s) specified in the administrative citation.

C. Any hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Board of Supervisors has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. Personal information about any reporting party related to the violation(s) shall not be disclosed.

D. The Board of Supervisors may continue the hearing as necessary. The decision of the Board of Supervisors shall be final upon adoption of an order containing its determination. Notice of the final decision shall be served by certified or registered mail on the affected persons. The administrative penalty is due and payable immediately upon the Board of Supervisors' decision.

E. Pursuant to Section 1085 of the Code of Civil Procedure, any person who has been named in an order issued pursuant to this chapter may,

following exhaustion of administrative remedies, seek judicial review of the order by filing a petition for writ of mandate within ninety (90) days after the order becomes final and binding pursuant to this chapter. Notwithstanding the provision of Section 1094.5 or 1094.6 of the Code of Civil Procedure, any person who contests the final administrative order issued under this chapter regarding the imposition, enforcement of collection of the administrative penalties imposed, may seek judicial review of the order by filing an appeal with the Superior Court within twenty (20) days after service of the order in accordance with Section 53069.4 of the government code. Any other person who has the right to seek judicial review of the order by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one hundred eighty (180) days after the order has become final and binding pursuant to this chapter. The filing of a petition for writ of mandate to review the order shall not stay any action specified in the order.

F. The failure of a responsible party to appear at the administrative citation hearing shall be deemed a failure to exhaust administrative remedies.

G. Neither imposition nor payment of an administrative penalty shall relieve the responsible party from his/her obligation to correct the violation, nor shall it bar further enforcement action by the public official.

#### **10.64.080 Payment and collection.**

A. In the event the responsible party fails to pay the administrative penalty when due, the County may take any actions permitted by law or ordinance to collect the unpaid penalty, which shall accrue interest at a rate of



ten percent (10%) per month, commencing thirty (30) days after the administrative penalty becomes due and continuing until paid.

B. In the event a civil action is commenced to collect the administrative penalty, the county shall be entitled to recover all costs associated with the enforcement, investigation, establishment and collection of the penalty. Costs include, but are not limited to, staff time and costs incurred in the enforcement, investigation, establishment and the collection or processing of the penalty and those costs set forth in Code of Civil Procedures Sections 685.010 et seq. and 1033.5.

C. The amount of any unpaid administrative penalty, plus any other costs as provided in this chapter, may be declared a lien on real property owned by the responsible party within the county as follows:

1. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be mailed first class mail postage prepaid to the last known address; and

2. When the public official records a lien listing delinquent unpaid administrative penalties with the county recorder's office, the lien shall specify the amount of the lien, the date of the code violations, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name of the owner of the parcel according to the last equalized assessment roll; and

3. In the event that the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge and release of the lien shall be prepared by the public official.

D. The amount of the unpaid administrative penalty, plus any other costs as provided by this chapter, may be declared a special assessment against any real property owned by the responsible party and located within the County. The board of supervisors may impose the special assessment on one (1 or more parcels. The amount of the assessment shall not exceed the amount of administrative penalty imposed for the violation, plus any cost authorized by other chapters of this code. The public official may present a resolution to the board of supervisors to declare a special assessment, and, upon passage and adoption thereof, shall cause a certified copy to be recorded with the Fresno County recorder's office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary property taxes.

E. The County may withhold issuance of licenses, permits and other entitlement for any property whenever an administrative penalty resulting from a code violation on that property remains unpaid or the owner of the property has outstanding, unpaid administrative penalties for violations of the code.

F. The County may take any action permitted for enforcement of a civil money judgment pursuant to the Enforcement of Law, California Code of Civil Procedure Section 680.010 et seq."

**SECTION 6:** This Ordinance shall take effect and be in force and effect 30 days from its adoption.

THE FOREGOING WAS PASSED and ADOPTED by the following vote of the Board of Supervisors of the County of Fresno this 7th day of Jan., 2014, to wit:

AYES: Supervisors Borgeas, Larson, Case McNairy, Perea, Poochigian  
NOES: None  
ABSENT: None

  
\_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

BERNICE E. SEIDEL, CLERK  
BOARD OF SUPERVISORS

By   
Deputy

FILE # NA

AGENDA # 33

ORDINANCE # 14-001