

2/24/15  
Item #30

February 20, 2015

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CLERK, BOARD OF SUPERVISORS

To: Fresno County Board of Supervisors

From: Michael S. Green

Re: Proposed changes to Ordinance 14-001

Honorable board members:

This letter requests that Agenda Item 30 on the board's February 24, 2014, consent agenda be pulled for separate consideration. This letter also seeks clarification from the County Counsel and/or counsel of record regarding the potential legal impacts of amending Ordinance 14-001 as proposed.

On February 6, 2015, I submitted written comments on behalf of the Fresno Cannabis Association, an unincorporated association of medical cannabis patients living in Fresno County. The letter detailed several serious procedural flaws in Ordinance 14-001 that would be exacerbated by the amendments. For the sake of brevity, I will not repeat those comments here but will incorporate them by reference. In a nutshell, your Board has turned Government Code 53069.4 on its head by instituting a punitive system of fines and summary abatement procedures that are "administrative" in name only.

On February 10, 2015, I emailed the same comments to counsel of record representing Fresno County in *Green v. County of Fresno, et al.*, Fresno County Superior Court case No. 14 CECG 00953. This case is fully briefed and set for hearing on the merits on March 26, 2014. The relevant portion of my email sought clarification on the following points:

- The proposed amendments are numerous (14 subsections) and substantial. There is no explicit language to indicate whether their passage will repeal Ordinance 14-001 in its entirety, but the long form of the draft ordinance itself suggests the County intends to press such a claim.
- No California Environmental Quality Act (CEQA) findings are found within the staff report or the draft ordinance itself, whether expressed directly or implied.
- Will Fresno County assert a mootness claim in the above-titled case after passage of the amended ordinance because it repeals Ordinance 14-001 in its entirety?
- If so, will Fresno County also expose itself to a facial challenge of the ordinance as amended, not just on CEQA grounds but also on procedural grounds (GC 53069.4)?

To date, I have not received a response from County Counsel or counsel of record on these legal issues, but they are certainly deserving of your Board's consideration before final passage. Inasmuch as your discussions with counsel are privileged and must be properly agendized, Agenda Item 30 should be pulled and tabled until a closed session can be scheduled at a later date.

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In the event that your Board proceeds with final passage of the proposed amendments, however, the following comments are submitted for entry into the administrative record:

1. Adopting the ordinance amendments as proposed cannot and will not repeal Ordinance 14-001 in its entirety, despite its long-form appearance. The basic provisions of Ordinance 14-001, which prohibits medical cannabis cultivation in all zone districts, will remain in effect after the amendments are adopted. No valid mootness claim can be raised in the above-titled case.
2. No CEQA findings are implied or expressed regarding the proposed amendments. While it is theoretically possible that the County could claim CEQA exemption or reliance upon the negative declaration that was adopted when Ordinance 14-001 was enacted, no such discussion or findings have been presented to your Board for consideration. The present ordinance is subject to CEQA, just as its predecessor was, and it cannot be adopted without CEQA findings.
3. To the extent that the County now claims, or intends to claim in the future, that the ordinance amendments rely on the negative declaration adopted on or about January 7, 2014, those findings remain under legal challenge in the above-titled case. If the new ordinance and its findings relate back to Initial Study No. 6770, the negative declaration and Ordinance 14-001 itself, so too do the comments made by myself and others prior to the growing ban's enactment. Thus, while they address Ordinance 14-001 and/or Ordinance T-88-369, the following documents are incorporated by reference into this letter of opposition to Agenda Item 30:
  - Generally, the Certified Administrative Record of Ordinances 14-001 and T-88-369 in its entirety as it was lodged with the court in the above-titled case on Sept. 30, 2014.
  - More specifically, my letters of opposition to Initial Study No. 6770 and its findings in support of the negative declaration, dated Dec. 26 and 27, 2013, with attachments, as they are found at pp. 152-546 of the Certified Administrative Record.
  - The InterOffice Memo to Board of Supervisors by Alan Weaver, Director, Fresno County Public Works and Planning re Public comments pertaining to Agenda Item No. 33 (Medical Marijuana) - January 7, 2014, Board of Supervisors Hearing, as it is found at pp. 549-564 of the Certified Administrative Record.
  - The written comments I submitted on behalf of the Fresno Cannabis Association, an unincorporated association of medical cannabis patients, on February 6, 2015.

Finally, this letter shall serve as notice of my intent to file a new CEQA action against the County and the other parties named in the above-titled case should any claim of mootness be raised after passage of the new ordinance. As always, my preference is for Fresno County to adopt reasonable regulations that would fairly balance the interests of medical cannabis patients with those of other county residents.

Thank you for your time and consideration of these comments.



Michael S. Green  
Fresno, Calif.

If you wish to view this document please see the Clerk to the Board at the open window.

BEFORE THE BOARD OF SUPERVISORS

FOR THE COUNTY OF FRESNO

STATE OF CALIFORNIA

ORDINANCE NO. 15-003

STATE OF CALIFORNIA  
COUNTY OF FRESNO  
I, Bernice E. Seidel, Clerk to the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the original Ord. 15-003 on file in my office. Witness my hand and seal This 2 day of March 20 15.  
BERNICE E. SEIDEL  
Clerk to the Board of Supervisors  
By: [Signature] Deputy

AN ORDINANCE AMENDING CHAPTERS 10.60, 10.62 AND 10.64. OF  
TITLE 10, RELATING TO IMPERMISSIBLE CULTIVATION OF MEDICAL  
MARIJUANA AS PUBLIC NUISANCE AND ADMINISTRATIVE PENALTIES FOR  
IMPERMISSIBLE 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 growers 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 growers 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 growers 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 growers.

L. The amendments adopted in this ordinance at Title 10, Sections 10.60.070, 10.60.080, 10.62.010, 10.62.040, 10.62.050, 10.62.090, 10.64.010,

10.64.040 and 10.64.050 are reflective of existing law and intended to clarify the original intent for the adoption of Chapters 10.60, 10.62 and 10.64 of the Fresno County Ordinance Code.

M. Based on evidence provided by the Fresno County Sheriff's Office from officers who are familiar with the cultivation and sale of marijuana, a single marijuana plant is capable of producing product with a street value of approximately \$1,000 to \$4,500. In addition, new techniques for extracting THC, the active ingredient in marijuana plants, may result in even higher street values per plant. In order to deter the cultivation of marijuana on a scale that creates the danger and risk to public health and safety recited above, substantial administrative fine amounts are necessary.

N. 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.

O. 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.

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**SECTION 2: Chapter 10.60 Medical Marijuana, of Title 10 of the**

Ordinance Code is amended in its entirety to read as follows:

**"Chapter 10.60 Medical Marijuana**

**10.60.010 Purpose and intent.**

It is the purpose and intent of this chapter pursuant to Government Code section 25123(d) to immediately prohibit the large-scale 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.

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**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 and/or administrative fines pursuant to Chapter 10.64.

**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, Chapter 10.62 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. This provision shall not apply to the appeals to Superior Court by persons cited or served a notice of abatement order provided for in Section 10.62.080(E) or Section 10.64.070(E).

**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 3:** Chapter 10.62 Abatement of Public Nuisances Created By Cultivation of Medical Marijuana In Violation of Chapter 10.60, of Title 10, is hereby amended 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. The procedures in this chapter are in addition to and concurrent with the provisions of Chapter 10.64 of this Ordinance Code and do not preempt or prevent a citation being issued pursuant to Chapter 10.64 immediately upon confirmation of the violation of Chapter 10.60 of this Ordinance 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 and the additional administrative penalty of \$100 per violation per day that said violation continues past the abatement deadline.

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 – Summary Abatement.**

A. The Board of Supervisors of the County of Fresno has found and determined that the cultivation of marijuana creates an immediate and imminent threat or danger to the health, safety or welfare of the occupants or the public.

B. The public official may order a summary abatement or require immediate action on the part of the property owner or lessee to eliminate the nuisance constituting the violation of Chapter 10.60. Summary abatement pursuant to this Section 10.62.050 is an alternative to the notice of abatement order process set forth in Section 10.62.040 and the remaining sections of Chapter 10.62 of this Ordinance Code. Summary abatement procedures pursuant to this Section 10.62.050 are in addition to and concurrent with the provisions of Chapter 10.64 of this Ordinance Code and do not preempt or prevent a citation being issued pursuant to Chapter 10.64 immediately upon confirmation of the violation of Chapter 10.60 of this Ordinance Code.



1. The public official shall make a reasonable attempt to notify the lessees and owners of the property or other 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. The public official determines 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, removal of plants that are the subject of the violation, disconnection or shutting off substandard utility connections, clean-up and disposal of rubbish or other materials which threaten public health; and

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

6. If necessary to the protection of occupants or members of the public, 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 identified in 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 if such administrative fine has not already been issued

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 in the Notice by the public official, or after appeal of the notice, by the Board of Supervisors , and is not granted a time extension, the public official 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 other than marijuana plants or parts thereof 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 4: 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 amended to read 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 1.13 Administrative Fines However, the provisions of Chapter 10.60, 10.62, and 10.64 take precedence over Chapter 1.13 with respect to any violation of Chapter 10.60 and nothing shall prevent the immediate issuance of a

citation pursuant to this Chapter 10.64 with or without a notice of order of abatement upon confirmation of a violation of Chapter 10.60.

**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 plant per day the plant remains unabated past the abatement deadline set forth in the notice of abatement order.

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

6. 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 or 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 stay the collection process of any administrative penalties until final resolution of the court proceedings.

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 the legal rate of judgment interest in the State of California, 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."

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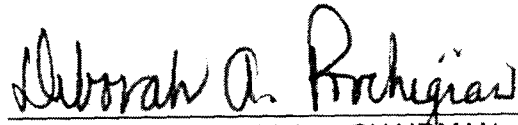
1 **SECTION 5:** This Ordinance shall take effect and be in force and effect 30 days from  
2 its adoption.

3 THE FOREGOING was passed and adopted by the following vote of the Board of  
4 Supervisors of the County of Fresno this 24<sup>th</sup> day of February, 2015, to-wit:

5  
6 AYES: Supervisors Borgeas, Perea, Mendes, Pacheco, Poochigian

7 NOES: None

8 ABSENT: None

9  
10   
11 Deborah A. Poochigian, CHAIRMAN  
12 Board of Supervisors  
13

14 ATTEST:  
15 BERNICE E. SEIDEL  
16 Clerk, Board of Supervisors

17 By Susan Bishop  
18 Deputy  
19  
20  
21

22 AGENDA ITEM NO. 30  
23 ORDINANCE NO. 15-003  
24  
25  
26  
27  
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