

1                               BEFORE THE BOARD OF SUPERVISORS

2                               OF THE COUNTY OF FRESNO

3                               STATE OF CALIFORNIA

4                               ORDINANCE NO. 16-017

5           AN INTERIM URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF  
6 THE COUNTY OF FRESNO ADOPTED ON DEC. 6, 2016, PROHIBITING THE  
7 POSSESSION, PLANTING, CULTIVATION, HARVESTING, DRYING, OR  
8 PROCESSING OF NONMEDICAL MARIJUANA OUTDOORS ON THE GROUNDS OF  
9 A PRIVATE RESIDENCE AND THE ESTABLISHMENT OR OPERATION OF  
10 BUSINESSES ENGAGED IN COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONING  
11 DISTRICTS OF FRESNO COUNTY.

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

13           **SECTION 1.** This interim urgency ordinance is adopted pursuant to California  
14 Constitution, article XI, section 7 and Government Code section 65858.

15           **SECTION 2.** The Board of Supervisors determines that it can be seen with  
16 certainty that the adoption of this Interim Urgency Ordinance will not have a significant  
17 effect on the environment, and is therefore exempt from further review under the  
18 California Environmental Quality Act ("CEQA"), pursuant to CEQA Guideline section  
19 15061, subdivision (b)(3). The adoption of this Interim Urgency Ordinance is also  
20 exempt from CEQA pursuant to Section 15308 as a regulatory action under the  
21 County's police power to assure maintenance and protection of the environment  
22 pending evaluation and adoption of potential local legislation and regulation.

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1           **SECTION 3.** The Board of Supervisors of the County of Fresno hereby makes  
2 the following legislative findings:

3           A.     The Ordinance Code of Fresno County currently prohibits (1) the  
4 cultivation of medical marijuana and (2) the operation of medical marijuana collectives  
5 and dispensaries, in all Zoning Districts of Fresno County.

6           B.     On November 8, 2016, the voters of the State of California were presented  
7 with Proposition 64, titled the "Adult Use of Marijuana Act" (AUMA). The purpose of  
8 AUMA is to establish a comprehensive system to legalize, control and regulate the  
9 cultivation, processing, manufacture, distribution, testing, and sale of nonmedical  
10 marijuana, including marijuana products.

11          C.     The AUMA would, among other things,

12           i.     permit cities and counties to completely prohibit the possession, planting,  
13 cultivation, harvesting, drying, or processing of nonmedical marijuana  
14 outdoors upon the grounds of a private residence. (Health & Safety Code  
15 § 11362.2, subd. (b)(3), as amended by AUMA.)

16           ii.    permit cities and counties to completely prohibit the establishment or  
17 operation of businesses engaged in commercial nonmedical marijuana  
18 activity. (Business and Professions Code § 26200., as amended by  
19 AUMA.)

20          D.     The Fresno County Sheriff's Department has presented evidence to the  
21 Board of Supervisors of some of the negative effects on public safety which are caused  
22 by the possession, planting, cultivation, harvesting, drying, or processing of marijuana  
23 outdoors and the establishment or operation of businesses engaged in commercial  
24 marijuana activity. Such effects include a variety of threats to public safety, such as  
25 armed robberies with shots fired, incidents with juveniles and young adults, and closure

1 and arrests of operators for violation of both state and federal laws, including seizure of  
2 illegal firearms, loitering, increased traffic, noise, and a loss of trade for other  
3 businesses located nearby.

4 E. Based on this evidence, the Board of Supervisors finds that the  
5 possession, planting, cultivation, harvesting, drying, or processing of nonmedical  
6 marijuana outdoors on the grounds of a private residence, and the establishment or  
7 operation of businesses engaged in commercial marijuana activity, present a current  
8 and immediate threat to the public health, safety, or welfare of the residents of and  
9 visitors to Fresno County.

10 F. Approval of any land use entitlement which would permit the possession,  
11 planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors  
12 on the grounds of a private residence, or the establishment or operation of businesses  
13 engaged in commercial marijuana activity would result in a threat to public health,  
14 safety, or welfare.

15 G. There is insufficient time for the County to adopt a regular, non-urgency  
16 ordinance applicable to such uses. Unless adopted on an urgency basis, such uses  
17 could potentially occur without any specific regulation applicable to it and therefore  
18 create a threat to the public health, safety, and welfare.

19 H. This Ordinance both complies with applicable state law, as well as  
20 imposing reasonable rules and regulations protecting the public health, safety, and  
21 welfare of the residents and businesses within the unincorporated area of Fresno  
22 County.

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1           **SECTION 4.** For purposes of this Interim Urgency Ordinance, these words and  
2 phrases shall be defined as follows:

3           A.     "Business engaged in commercial nonmedical marijuana activity" includes,  
4 but is not limited to, all business organizations of whatever form, which are licensed by  
5 the State of California to cultivate, manufacture, test, sell at retail, or distribute,  
6 nonmedical marijuana.

7           B.     "County" means the County of Fresno or the unincorporated area of  
8 Fresno County as required by the context.

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

12           D.     "Marijuana" shall have the same definition as in California Health and  
13 Safety Code Section 11018 as it now reads or as amended.

14           E.     "Medical Marijuana" means marijuana used for medical purposes in  
15 accordance with California Health and Safety Code sections 11362.7 et seq.

16           F.     "Nonmedical Marijuana" means marijuana not used for medical purposes  
17 in accordance with California Health and Safety Code sections 11362.7 et seq.

18           **SECTION 5.** Pursuant to California Constitution, article XI, section 7 and  
19 Government Code section 65858, and notwithstanding any other provision of the  
20 Ordinance Code of Fresno County, to ameliorate the current and immediate threat to  
21 public health, safety and welfare, presented by the possession, planting, cultivation,  
22 harvesting, drying, or processing of nonmedical marijuana outdoors, or the  
23 establishment or operation of a business engaged in commercial marijuana activity, the  
24 Board of Supervisors hereby prohibits:  
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1           1.     The possession, planting, cultivation, harvesting, drying, or processing of  
2 nonmedical marijuana outdoors on the grounds of a private residence in all Zone Districts  
3 of Fresno County, to the fullest extent permitted by State law.

4           2.     The establishment or operation of a business engaged in commercial  
5 marijuana activity in all Zone Districts of Fresno County.

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7           **SECTION 6.** This Ordinance is an urgency ordinance necessary for the immediate  
8 preservation of the public health, safety, and welfare, adopted pursuant to Section 65858  
9 of the Government Code of the State of California, and pursuant to Government Code  
10 section 25123, subdivision (d), is effective immediately and shall remain in effect for 45  
11 days unless extended pursuant to Government Code section 65858.

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13           **SECTION 7.** Pursuant to Government Code section 25124, subdivision (a), prior  
14 to the expiration of fifteen (15) days from the adoption of this Ordinance, it shall be  
15 published at least one time in the Business Journal, a newspaper of general circulation  
16 in Fresno County.

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1 THE FOREGOING WAS PASSED AND ADOPTED BY THE FOLLOWING  
2 VOTE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO THIS  
3 6<sup>TH</sup> DAY OF DECEMBER 2016, TO-WIT:

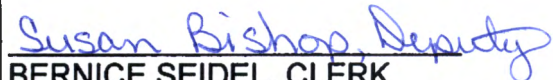
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5 AYES: Supervisors Borgeas, Mendes, Pacheco, Perea, Poochigian

6 NOES: None

7 ABSENT: None

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ERNEST BUDDY MENDES, CHAIRMAN  
BOARD OF SUPERVISORS

10 ATTEST:

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13 BERNICE SEIDEL, CLERK  
BOARD OF SUPERVISORS