



# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
**ALAN WEAVER**  
DIRECTOR

## **Planning Commission Staff Report Agenda Item No. 6 July 21, 2011**

**SUBJECT:** Amendment to Text Application No. 364

Amend Sections 803.1 and 843.1 of the Fresno County Zoning Ordinance relating to Medical Marijuana Cultivation Facilities in the M-1 (Light Manufacturing), M-2 (General Industrial) and M-3 (Heavy Industrial) Zoning Districts.

**APPLICANT:** Fresno County

**STAFF CONTACT:** Bernard Jimenez, Manager  
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### **RECOMMENDATION:**

- Consider and recommend approval of Amendment to Text Application No. 364; and
- Direct the Secretary to prepare a Resolution forwarding the Commission's recommendation for approval to the Board of Supervisors.

### **EXHIBITS:**

1. Proposed Section 803.12 – SPECIFIC DEFINITIONS GROUP K
2. Proposed Section 843.1 – USES PERMITTED
3. Board of Supervisor's Agenda Item #6 – July 12, 2011

### **IMPACTS ON JOB CREATION:**

Approval of the recommended action would not affect the efforts to create jobs in Fresno County.

## **ENVIRONMENTAL ANALYSIS:**

It has been determined, pursuant to Section 15061(b)(3) of the State CEQA Guidelines that the project will not have a significant effect on the environment and is not subject to the California Environmental Quality Act (CEQA).

## **PUBLIC NOTICE:**

Notification of today's hearing was published in the Fresno Business Journal on July 8, 2011.

## **PROCEDURAL CONSIDERATIONS:**

Adoption of a Zoning Ordinance Amendment is a legislative act requiring action by the Board of Supervisors. The Planning Commission's action is advisory to the Board. The Board is scheduled to hear this matter on August 9, 2011. The Amendment, upon adoption, will become effective 30 days later.

## **BACKGROUND:**

On July 13, 2010, the Fresno County Board of Supervisors considered and adopted an Interim Urgency Ordinance prohibiting the establishment of new Medical Marijuana Dispensaries in the unincorporated areas of Fresno County pending completion of a Zoning Ordinance Text Amendment initiated on the same day (Resolution of Intention No. 10-269). The Board also directed staff to prepare a comprehensive Ordinance addressing possession, consumption and distribution, and cultivation of medical marijuana in Fresno County. On September 14, 2010, the Board extended said Interim Urgency Ordinance and it remains in effect until July 13, 2012.

On September 14, 2010, the Board also considered and adopted a second Interim Urgency Ordinance prohibiting the outdoor cultivation of medical marijuana collectives in all Zone Districts in the unincorporated areas of Fresno County pending completion of Development Standards intended to regulate such activity. On October 26, 2010, the Board extended said Interim Urgency Ordinance and it remains in effect until September 14, 2011.

On December 7, 2010, the Board considered and provided direction to staff regarding regulating Medical Marijuana Dispensaries in the unincorporated areas of Fresno County. The Board considered testimony from the Sheriff's Office staff, and from the public both in support and opposition to dispensaries. At the conclusion of the hearing, the Board directed staff to proceed with the preparation of the Medical Marijuana Ordinance prohibiting Medical Marijuana Dispensaries.

On July 12, 2011, the Board considered and approved the first reading of an Ordinance to amend the Fresno County Ordinance Code by adding Chapter 6.6 (Business License and Regulations) and Chapter 11 (Public Peace, Morals and Welfare) thereby adopting regulations relating to possession, consumption and distribution, and cultivation of medical marijuana (See Exhibit 1). The second reading of the Ordinance is also scheduled for August 9, 2011.

#### **ANALYSIS / DISCUSSION:**

In 1996, the voters passed Proposition 215, The Compassionate Use Act, permitting seriously ill persons to use medical marijuana providing they first obtain a doctor's recommendation. Proposition 215 also provided a defense for doctors against professional or legal sanctions for recommending marijuana.

In 2004, the Legislature clarified The Compassionate Use Act with the adoption of SB 420 (Medical Marijuana Program). The intent of SB 420 is to:

1. Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; and
2. Promote uniform and consistent application of the act among the counties within the state; and
3. Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

Since the adoption of SB 420, many California jurisdictions have experienced the proliferation of medical marijuana dispensaries and cultivation grows located in a variety of locations with insufficient regard for public health, safety, welfare, or land use compatibility. Land use issues include loitering, trespass, and compatibility with schools, parks and other places where children are present.

Other than the Interim Urgency Ordinances adopted by the Board in 2010, the County has no Development Standards applicable to Medical Marijuana Facilities. There are no license requirements, and the Zoning Ordinance makes no reference to medical marijuana. With the anticipated addition of Chapter 6.60 to the County Ordinance Code in August, the Board will have established licensing requirements for Medical Marijuana Cultivation Facilities. This chapter defines Medical Marijuana Cultivation Facilities, where the use can be located and operational and physical improvement requirements, including the requirement that all cultivation of medical marijuana shall at all times occur within a secure, locked, and fully enclosed structure, including a ceiling, roof or top. Section 6.60.030 of the proposed Ordinance indicates that Medical Marijuana Cultivation Facilities shall be a minimum of 1,000 feet from any school, public park or playground, recreation area, sports facility, adult business, day care facility, church, chapel, youth-orientated

establishment, places of worship or other Medical Marijuana Cultivation Facility. Chapter 6.60.30 also specifies that Medical Marijuana Cultivation Facilities are only allowed within the County's M-1, M-2 and M-3 Industrial Zoning Districts.

Since Medical Marijuana Cultivation Facilities will be defined in Section 10.60.010 of the Ordinance Code, and the Ordinance Code provides "location requirements" for Cultivation Facilities, these Standards are not being duplicated in the Zoning Ordinance. By adding a specific entry for Medical Marijuana Facilities to the "USES PERMITTED" Section of the M-1 District (Note: the M-2 and M-3 Districts allow all the permitted uses included in the M-1 District), Medical Marijuana Cultivation Facilities will be prohibited in all Zoning Districts except the M-1, M-2 and M-3 Districts.

State law requires that there be consistency between the General Plan (the document which defines the long-term development objectives) and the Zoning Ordinance. The consistency requirement applies to the text of the Zoning Ordinance in that the uses authorized by the Ordinance must be compatible with the Goals and Policies of the General Plan. The Urban Industrial Policies of the General Plan provides for manufacturing and processing activities. One of the objectives of the industrial designation is to direct development to sites where conflicts with other land uses are minimized. The use authorized under this proposal is limited exclusively to Medical Marijuana Cultivation Facilities and the intent is to separate this type of land use from sensitive uses, including residences, schools, churches, recreational parks and other similar uses. Based upon the proposed separation requirements contained in the license provisions of the Ordinance Code, there are approximately 34 sites in Fresno County that could potentially accommodate cultivation operations.

## **CONCLUSION:**

Staff recommends that Medical Marijuana Cultivation Facilities as licensed under Chapter 6.60 of the Fresno County Ordinance Code be added to the M-1, M-2 and M-3 Zoning Districts (See Exhibit 3). (Note: **Bold and underline Sections** are proposed as additions to the Ordinance and ~~strikethrough~~ sections are to be deleted).

## **PLANNING COMMISSION MOTION:**

### **Recommended Motion**

- Approve Amendment to Text No. 364 as proposed; and
- Direct the Secretary to prepare a Resolution forwarding the Commission's recommendation for approval to the Board of Supervisor's.

## Exhibit 1

### SECTION 803.12 - SPECIFIC DEFINITIONS GROUP K.

(Amended by Ord. 490.133 adopted 6-7-77)

MAJOR STREET OR MAJOR HIGHWAY shall mean a highway with intersections at grade and on which partial control of access and geometric design and traffic control measures are used to expedite the safe movement of through traffic. Major streets or major highways shall be designated in the Circulation Element of the General Plan of the County of Fresno.

MARQUEE shall mean a permanent roofed structure attached to and supported by the building and projecting over public property.

MEDICAL MARIJUANA CULTIVATION FACILITY as defined in Chapter 10.60.10 of Title 10 of County Ordinance Code. This does not include "Medical Marijuana Dispensary", which is a prohibited use in all zoning districts, as defined in Chapter 10.60.10 of Title 10 of County Ordinance Code.

(Added by Ord. adopted 8-9-11)

MEDICAL OFFICE shall mean any building or portion of a building used or intended to be used as an office for the practice of any type of medicine, including chiropractics, dentistry or optometry. It shall also include clinics of a medical or dental nature.

MEDICAL OR DENTAL CLINIC shall mean the same as "Medical Office."

MOBILEHOME shall mean a "Trailer" in excess of eight feet wide or forty feet long designed to be used with or without a permanent foundation, and equipped to contain one (1) "Dwelling Unit".  
(Amended by Ord. 490.175 re-adopted 5-29-79)

MOBILEHOME PARK shall mean an area or tract of land developed and operated in accordance with Title 25, California Administrative Code, where two (2) or more mobilehome spaces are rented or leased or held out for rent or lease to accommodate "mobilehomes" used for human habitation.  
(Added by Ord. 490.175 re-adopted 5-29-79)

MOBILEHOME PARK SERVICES shall mean commercial services available within the park only to residents, their guests and park employees. The Special Standards of Section 855-N (Mobilehome Park Services) shall apply.  
(Added by Ord. 490.188 adopted 10-29-79)

MOTEL shall mean a building or group of buildings used for transient residential purposes containing guest rooms or dwelling units with automobile storage space provided in connection therewith, which building or group is designed, intended, or used primarily for the accommodation of transient automobile travelers, including groups designated as auto cabins, motor courts, motor hotels and similar designation.

MOTORHOME shall mean a "Recreational Vehicle" in which the portions providing motive power and habitable space are constructed as a single unit.  
(Added by Ord. 490.175 readopted 5-29-79)

NONCONFORMING BUILDING shall mean a building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.  
(See Section 876 for regulations.)

## **Exhibit 2**

### **SECTION 843**

#### **"M-1" - LIGHT MANUFACTURING DISTRICT**

The "M-1" (Light Manufacturing) District is intended to provide for the development of industrial uses which include fabrication, manufacturing, assembly or processing of material that are in already processed form and which do not in their maintenance, assembly, manufacture or plant operation create smoke, gas, odor, dust, sound, vibration, soot or lighting to any degree which might be obnoxious or offensive to persons residing in or conducting business in either this or any other district.

#### **SECTION 843.1 – USES PERMITTED**

The following uses shall be permitted in the "M-1" District. All uses shall be subject to the Property Development Standards in Section 843.5.

##### **A. RELATED USES**

1. Advertising structures.
2. Animal hospitals and shelters.
3. Automobile repairs (conducted within a completely enclosed building).
4. Automobile re-upholstery.
5. Automobile service stations.
6. Banks.
7. Caretaker's residence, which may include an office for the permitted industrial use.  
(Amended by Ord. 490.152 adopted 7-10-78)
8. Commercial uses that are incidental to and directly related to and serving the permitted industrial uses.
9. Delicatessens.
10. Electrical supply.
11. Equipment rental or sale
12. Farm equipment sales and service.
13. Frozen food lockers.
14. Grocery stores.
15. Boarding and training, breeding and personal kennels.  
(Amended by Ord. 490.36 adopted 7-25-67)

16. Ice and cold storage plants
17. Mechanical car, truck, motor and equipment wash, including self-service.  
(Added by Ord. 490.23 adopted 12-28-65)
18. Newspaper publishing
19. Offices:
  - a. Administrative.
  - b. Business.
  - c. General.
  - d. Medical
  - e. Professional
20. New and used recreational vehicle sales and service.  
(Added by Ord. 490.129 adopted 1-11-77)
21. Restaurants.
22. Signs, subject to the provisions of Section 843.5-K.
23. Truck service stations.
24. Truck driver's training schools.  
(Amended by Ord. T-070-341 adopted 4-23-02)

B. ADULT BUSINESSES that are licensed under Chapter 6.33 of Ordinance Code, including uses such as:

1. Bars.
2. Restaurants.
3. Theaters.
4. Video stores.
5. Book stores.
6. Novelty sales.  
(Added by Ord. T-074-346 adopted 7-30-02)

C. MANUFACTURING

1. Aircraft, modification, storage, repair and maintenance
2. Automotive:
  - a. Painting.
  - b. Automotive reconditioning.
  - c. Truck repairing and overhauling.
  - d. Upholstering.
  - e. Battery assembly (including repair and rebuilding) limited to the use of previously manufactured components.

(Added by Ord. 490.33 adopted 1-17-67)

3. Boat building and repairs.
4. Book binding.
5. Bottling plants.
6. Ceramic products using only previously pulverized clay and fired in kilns only using electricity or gas.
7. Commercial grain elevators.
8. Garment manufacturing.
9. Machinery and shop (no punch presses over twenty (20) tons or drop hammers):
  - a. Blacksmith shops.
  - b. Cabinet or carpenter shops.
  - c. Electric motor rebuilding.
  - d. Machine shops.
  - e. Sheet metal shops.
  - f. Welding shops.
  - g. Manufacturing, compounding, assembly or treatment of articles or merchandise from previously prepared metals.
10. Manufacturing, compounding, processing, packing or treatment of such products as:
  - a. Bakery goods.
  - b. Candy.
  - c. Cosmetics.
  - d. Dairy products.
  - e. Drugs.
  - f. Food products (excluding fish and meat products, sauerkraut, wine, vinegar, yeast and the rendering of fats and oils) if connected with an adequate sewer system.
  - g. Fruit and vegetables (packing only).
  - h. Honey extraction plant.
  - i. Perfume.
  - j. Toiletries.
11. Manufacturing, compounding, assembly or treatment of articles or merchandise from the following previously prepared materials:
  - a. Canvas.
  - b. Cellophane.
  - c. Cloth.
  - d. Cork.
  - e. Felt.
  - f. Fibre.
  - g. Fur.
  - h. Glass.
  - i. Leather.
  - j. Paper, no milling.



- k. Precious or semi-precious stones or metals.
- l. Plaster.
- m. Plastic.
- n. Shells.
- o. Textiles.
- p. Tobacco.
- q. Wood.
- r. Yarns.

12. Manufacturing and maintenance of electric or neon signs

13. Novelties.

14. Planing mills.

15. Printing shops, lithographing, publishing.

16. Retail lumber yard.

17. Rubber and metal stamps.

18. Shoes.

19. Stone monument works.

20. Storage yards:

- a. Contractors storage yard.
- b. Draying and freight yard.
- c. Feed and fuel yard.
- d. Machinery rental.
- e. Motion picture studio storage yard.
- f. Transit storage.
- g. Trucking yard terminal, except freight classifications.

21. Textiles.

22. Wholesaling and warehousing.

23. Wholesale meat cutting and packing, provided there shall be no slaughtering, fat rendering or smoke curing.

(Added by Ord. 490.21 adopted 9-14-65)

D. PROCESSING

1. Creameries.

2. Laboratories.

3. Blueprinting and photocopying.

4. Laundries.

5. Carpet and rug cleaning plants.
6. Cleaning and dyeing plants.
7. Tire retreading, recapping, rebuilding.
8. Lumber drying kilns; gas, electric or oil fired only.  
(Added by Ord. 490.77 adopted 8-17-72)
9. Feather cleaning and storage of cleaned feathers within an enclosed structure.  
(Added by Ord. 490.82 adopted 11-21-72)

E. FABRICATION

1. Rubber, fabrication of products made from finished rubber.
2. Assembly of small electric and electronic equipment.
3. Assembly of plastic items made from finished plastic.

F. OTHER USES

1. Agricultural uses.
2. Communication equipment buildings.
3. Electric transmission substations.
4. Off-street parking.
5. **Medical Marijuana Cultivation Facility licensed under Chapter 6.6 of Title 6 of County Ordinance Code.**  
**(Added by Ord.        adopted 8-9-11)**
- ~~5.~~ 6. Public utility service yards with incidental buildings.
- ~~6.~~ 7. Electric distribution substations.
- ~~7.~~ 8. Temporary or permanent telephone booths.
- ~~8.~~ 9. Water pump stations.