

1 JOSEPH D. ELFORD (S.B. NO. 189934)  
2 Americans for Safe Access  
3 1322 Webster Street #208  
4 Oakland, CA 94621  
5 Telephone: (415) 573-7842  
6 Fax: (510) 486-8090

7 Counsel for Plaintiffs

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF FRESNO  
10 UNLIMITED JURISDICTION

11  
12 AMERICANS FOR SAFE ACCESS and )  
13 WILLIAM McPIKE, )  
14 )  
15 Plaintiffs, )  
16 v. )  
17 CITY OF FRESNO, a municipal corporation, )  
18 )  
19 Defendant. )  
20 )  
21 )

Civil Action No.

**VERIFIED COMPLAINT FOR  
DECLARATORY RELIEF,  
PRELIMINARY INJUNCTION,  
AND PERMANENT INJUNCTION**

22 **I. INTRODUCTION**

23 1. This is an action for declaratory and injunctive relief arising out of an unlawful  
24 ordinance passed by the City of Fresno banning medical marijuana collectives throughout the city.  
25 Plaintiff McPike is a qualified medical marijuana patient who took steps towards forming a medical  
26 marijuana collective in accordance with California Health and Safety Code sections 11362.5 and  
27 11362.775. Together with plaintiff Americans for Safe Access, plaintiff McPike, on behalf of  
28

1 himself and on behalf of others who are similarly situated, as well as those who are detrimentally  
2 affected by the City Ordinance, seek an order declaring Fresno Municipal Code section 8-221 (Fresno  
3 City Ordinance No. 2004-112) unlawful and enjoining its continued implementation. The City of  
4 Fresno's rigid policy of banning all medical marijuana collectives deprives qualified medical  
5 marijuana patients of the medicine promised them by the Compassionate Use Act (Cal. Health &  
6 Safety Code § 11362.5(d)), thereby causing them wholly unnecessary pain and suffering. Section 8-  
7 221 violates the Compassionate Use Act (Cal. Health & Safety Code § 11362.5(d)).  
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9           2.       In the general election of November 4, 1996, fifty-seven percent of the California  
10 electorate approved a ballot measure enacting Proposition 215 ("Proposition 215" or "the  
11 Compassionate Use Act" or "the CUA"). In so doing, the California voters declared as their purpose  
12 "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical  
13 purposes where that medical use is deemed appropriate and has been recommended by a physician  
14 who has determined that the person's health would benefit from the use of marijuana in the treatment  
15 of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness  
16 for which marijuana provides relief." (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Furthermore,  
17 the voters sought "[t]o encourage the federal and state governments to implement a plan to provide  
18 for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."  
19 (Cal. Health & Safety Code § 11362.5(b)(1)(C))  
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22           3.       On September 10, 2003, the California Legislature clarified the Compassionate Use  
23 Act through its passage of SB 420. In particular, the Legislature provided that "Qualified patients,  
24 persons with valid identification cards, and the designated primary caregivers of qualified patients  
25 and persons with identification cards, who associate within the State of California in order  
26 collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis  
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1 of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366,  
2 11366.5, or 11570.” (Cal. Health & Safety Code § 11362.775) Under these laws, plaintiff McPike  
3 had a right to associate with other qualified patients and primary caregivers to furnish sick and dying  
4 persons with the medicine they need.  
5

6 4. Notwithstanding plaintiff McPike’s right to open a collective to furnish marijuana to  
7 qualified patients and their primary caregivers, the City of Fresno enacted Fresno Municipal Code  
8 section 8-221, which provides: “(d) Medical Marijuana Dispensaries where medical marijuana is  
9 distributed by, distributed to, or made available to any combination of three or more qualified  
10 patients, persons with an identification card, or primary caregivers defined by California Health and  
11 Safety Code § 11362.5 *et seq.* are prohibited.” (Fresno Municipal Code § 8-221(d)) Subsection 8-  
12 221(c), in turn, defines a “Medical Marijuana Dispensary” as “any facility or location, whether fixed  
13 or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more  
14 of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary  
15 caregiver.” As a result of this policy, plaintiff has been forbidden from opening and operating a  
16 medical marijuana collective and medical marijuana patients represented by Americans for Safe  
17 Access have had to suffer and/or turn to the black market to obtain the medicine they need.  
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20 5. The expansive prohibition on medical marijuana collectives violates California Health  
21 and Safety Code sections 11362.5 and 11362.775. Both the California Constitution and the  
22 Government Code prohibit the enforcement of a city ordinance in conflict with state law. (Cal.  
23 Const., art. XI, § 7; Gov’t Code § 37100)  
24

## 25 **II. JURISDICTION AND VENUE**

26 6. Jurisdiction is based on Article VI, Section 10 of the California Constitution; Civil  
27 Code sections 51.7 & 52.1; and Code of Civil Procedure sections 32.5 and 86.  
28



1 identification cards, who associate within the State of California in order collectively or cooperatively  
2 to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to  
3 state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.”  
4 (Cal. Health & Safety Code § 11362.775) Under these laws, plaintiff McPike had a right to associate  
5 with other qualified patients and primary caregivers to furnish sick and dying persons with the  
6 medicine they need.  
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8           13.     Precisely as the voters of California and their Legislature intended, plaintiff McPike  
9 took steps to form a medical marijuana collective.  
10

11           14.     In July or August of 2004, McPike drafted the Article of Incorporation for a non-profit  
12 corporation known as the “Tower Health Clinic & Dispensary.”

13           15.     After being told by an employee of the Fresno City Planning Department that he  
14 would need to submit a business plan in order to receive zoning approval, McPike submitted a two-  
15 page business plan to that agency.  
16

17           16.     Weeks later, on October 26, 2004, the Council of the City of Fresno enacted  
18 Ordinance No. 2004-112, which added Section 8-221 to the Fresno Municipal Code.  
19 Notwithstanding the Compassionate Use Act and SB 420, that section provides: “(d) Medical  
20 Marijuana Dispensaries where medical marijuana is distributed by, distributed to, or made available  
21 to any combination of three or more qualified patients, persons with an identification card, or primary  
22 caregivers defined by California Health and Safety Code § 11362.5 *et seq.* are prohibited.” (Fresno  
23 Municipal Code § 8-221(d)) Subsection 8-221(c), in turn, defines a “Medical Marijuana Dispensary”  
24 as “any facility or location, whether fixed or mobile, where medical marijuana is made available to,  
25 distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person  
26 with an identification card, or (3) a primary caregiver.”  
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1 medical purposes where that medical use is deemed appropriate and has been recommended by a  
2 physician who has determined that the person’s health would benefit from the use of marijuana. . . .”  
3 (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Furthermore, they sought out to ensure a safe and  
4 effective distribution system. (See Cal. Health & Safety Code § 11362.5(b)(1)(C))  
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6 24. To advance the will of the California voters, the Legislature enacted SB 420, which  
7 established cooperatives and collectives as the recognized forms of medical marijuana cultivation and  
8 distribution to those who are too sick are otherwise unable to cultivate it for themselves. (See Cal.  
9 Health & Safety Code § 11362.775)  
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11 25. In passing these laws, the voters of California and their Legislature have occupied the  
12 field of medical marijuana law generally, which is a matter of pressing statewide concern. Because  
13 Fresno Municipal Code section 8-221 conflicts these general laws by curtailing the right of seriously  
14 ill Californians to obtain the medicine they need through the distribution channels identified by the  
15 State, the general rule of California must prevail over the Fresno City Ordinance. (See *City of Fresno*  
16 *v. Pinedale County Water Dist.* (1986) 184 Cal.App.3d 840, 845; *City of Los Angeles v. State of*  
17 *California* (1982) 138 Cal.App.3d 526, 532.)  
18

## 19 V. RELIEF SOUGHT

20 WHEREFORE, plaintiffs, on behalf of themselves and others similarly situated, seek the  
21 following relief:  
22

23 1. A declaration that Fresno Municipal Code section 8-221 is unlawful and  
24 unconstitutional;

25 2. A preliminary and permanent injunction enjoining defendant and its agents and  
26 employees from enforcing, or threatening to enforce, Fresno Municipal Ordinance section 8-221;  
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**VERIFICATION**

I am the individual plaintiff in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_ day of April, in Fresno, California.

\_\_\_\_\_

WILLIAM McPIKE

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial of this action.

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4  
5 DATED: April 25, 2005

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7 \_\_\_\_\_  
8 JOSEPH D. ELFORD  
9 Attorney for Plaintiffs