

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: URGENCY ORDINANCE - MORATORIUM ON ESTABLISHING ANY MEDICAL MARIJUANA DISPENSARIES

DATE: MARCH 15, 2005

Needs: For the City Council to consider adopting an Urgency Ordinance to establish a moratorium prohibiting the establishment of any medical marijuana dispensaries.

Facts:

1. In 1996, the State of California approved Proposition 215, the “The Compassionate Use Act of 1996”, which is codified in the States Health and Safety Code, section 11362.5 et seq.
2. The Compassionate Use Act was clarified under SB 420, which allows cities to adopt and enforce rules and regulations to implement SB 420.
3. Federal law prohibits the possession, cultivation, use, and dispensing of marijuana regardless of its purpose. However, this federal law is currently before the U.S. Supreme Court in the case of *Ashcroft v. Raich*. The decision of this case may alter the disposition of state law.
4. In the absence of local regulations either regulating this use or prohibiting it leaves open the potential for this use to locate in locations where retail uses, drug stores or medical uses are permitted.
5. If these types of businesses were allowed to locate in the City without appropriate regulations, such uses might be established in locations, and in a manner that would be in conflict with the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare of the community.
6. Cities in San Luis Obispo County have had inquiries from persons interested in pursuing this use.
7. Other cities, including Atascadero, San Luis Obispo, Grover Beach and Arroyo Grande have enacted Urgency Ordinances to place a moratorium on the establishment of this type of business to allow time for those cities to adopt permanent regulations.

Analysis  
and

Conclusion:

The existing zoning regulations do not provide for the location and/or regulation of medical marijuana dispensaries. Without appropriate regulations adopted to either regulate or prohibit this use, it may be determined to be permissible in zoning districts that allow retail uses, drug stores, or medical uses.

Since there are no current regulations specifically dealing with this use, if a dispensary were permitted to be established in the City, it might be established in conflict with the requirements of the General Plan, be inconsistent with surrounding land uses and neighborhoods, or otherwise be detrimental to the public health safety and welfare.

It is within the City Council's authority to adopt an "urgency ordinance" (Government Code Section 65858) to temporarily prohibit a use by implementing a moratorium. This would allow time for the City to prepare appropriate regulations. An urgency ordinance requires a 4/5 vote of the City Council for adoption. The initial adoption is effective for 45 days. It can be extended with notice and a hearing, if the Council would like to extend an urgency ordinance for an additional 22 months and 15 days.

Should the federal court determine that federal law supercedes state law regulating this use, state law would be invalid and local regulations would become moot.

With the adoption of this urgency ordinance, it will provide staff and the Council an opportunity to study the issues involved and prepare appropriate regulations for consideration. Staff will continue to monitor the *Ashcroft v. Raich* case and report back on issues that may affect the City.

If adopted, the urgency ordinance will take effect immediately and continue for 45 days until April 28, 2005, unless extended by further Council action.

Policy

Reference:

Health and Safety Code section 11362.5 et seq, SB 420, City of Paso Robles Zoning Ordinance

Fiscal

Impact:

None

Options: After considering the public testimony received, the City Council will be asked to select one of the following options:

- a.** Introduce for first reading Ordinance No. XXX N.S. establishing a moratorium on any and all medical marijuana dispensaries from March 15, 2005, through and including April 28, 2005, unless extended by further action of the City Council, to take effect immediately.
- b.** Amend, modify, or reject the above option.

Attachment:

Urgency Ordinance No. XXX N.S.

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
ESTABLISHING A MORATORIUM ON ANY AND ALL MEDICAL MARIJUANA  
DISPENSARIES FROM MARCH 15, 2005, THROUGH AND INCLUDING APRIL 28, 2005,  
UNLESS EXTENDED BY FURTHER ACTION OF THE CITY COUNCIL,  
TO TAKE EFFECT IMMEDIATELY

WHEREAS, the voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"); and

WHEREAS, the State enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, in adopting this moratorium, it is the council's intention that nothing in this Ordinance be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, permits or allows persons to use marijuana for non-medical purposes or allows any activity related to the cultivation, distribution or consumption of marijuana that is otherwise illegal; and

WHEREAS, the existing City zoning regulations do not provide for the location and regulation of medical marijuana dispensaries and such uses might be permissible in any zone that allows retail uses, drug stores, or medical uses; and

WHEREAS, during the pendency of this moratorium, City Council has directed City staff to prepare, and the Planning Commission to consider and make a recommendation on, a proposal to regulate through limiting the allowable zones and requiring conditional use permits and/or prohibiting medical marijuana dispensaries; and

WHEREAS, neighboring cities in San Luis Obispo County have received inquiries regarding the regulations and requirements for the establishment of medical marijuana dispensaries and the City anticipates that it will soon receive similar inquiries as well; and

WHEREAS, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, while medicinal marijuana use is permitted under California law, marijuana is a prohibited controlled substance under federal law, and pending before the U.S. Supreme Court is the case of *Ashcroft v. Raich*, and a decision on that matter may resolve this conflict of laws; and

WHEREAS, this urgency ordinance is adopted pursuant to the requirements of Government Code section 65858;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1. Finding, Declaration of Urgency.

The City Council of the City of El Paso de Robles hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on all new medical marijuana dispensaries, subject to the findings and conditions obtained in this Ordinance. Other cities in San Luis Obispo County have received inquiries regarding the establishment of medical marijuana dispensaries and it is anticipated that Paso Robles will soon receive similar inquiries as well. If medical marijuana dispensaries are allowed to proceed without appropriate review of location and operational criteria and standards, the dispensaries could have potential adverse secondary effects on neighborhoods and the City that present a clear and immediate danger to the public health, safety and welfare. The City finds that if establishment or development of medical marijuana dispensaries were allowed to proceed while the City is studying zoning proposals and regulations for this use, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit this use. Failure to enact this moratorium during the stated period may result in significant irreversible change to neighborhood and community character. Based on the foregoing, the City Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while considering revisions to the zoning regulations related to medical marijuana dispensaries.

SECTION 2. Moratorium.

(a) The City Council hereby declares a moratorium on any and all medical marijuana dispensaries and any and all modifications to existing uses to add a medical marijuana dispensary.

SECTION 3. Definitions.

As used herein the term "Medical Marijuana Dispensary" or "Dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. and the City of El Paso de Robles Municipal Code, including but not limited to the City's Zoning Code.

SECTION 4. Effective Date.

This Interim Ordinance shall become effective and shall remain in force and effect from and including March 15, 2005, through and including April 28, 2005, unless extended prior to expiration date.

Passed and adopted by the City Council of the City of El Paso de Robles on the 15<sup>th</sup> day of March 2005  
by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Frank R. Mecham, Mayor

ATTEST:

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Sharilyn M. Ryan, Deputy City Clerk

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL  
PROJECT NOTICING

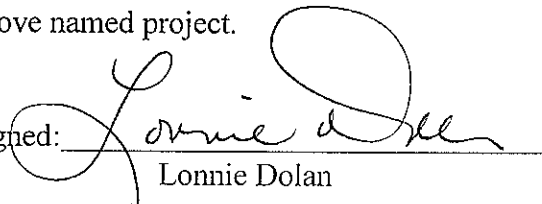
Newspaper: Tribune

Date of Publication: March 4, 2005

Meeting Date: March 15, 2005  
(City Council)

Project: Medical Marijuana Dispensaries  
(City initiated)

I, Lonnie Dolan, employee of the Community Development Department, Planning Division, of the City of El Paso de Robles, do hereby certify that this notice is a true copy of a published legal newspaper notice for the above named project.

Signed:   
Lonnie Dolan

forms/newsaffi.691

**CITY OF EL PASO DE ROBLES  
NOTICE OF PUBLIC HEARING**  
**NOTICE IS HEREBY GIVEN** that the City Council of the City of El Paso de Robles will hold a Public Hearing on Tuesday, March 15, 2005, at 7:30 p.m. at the City of El Paso de Robles, 1000 Spring Street, Paso Robles, California, in the City Council Chambers, to consider an Urgency Ordinance establishing a Moratorium on any and all Medical Marijuana Dispensaries.

Municipal Code Urgency Ordinance No. 05-XX, to establish a moratorium on any and all Medical Marijuana Dispensaries for 45 days, to be in effect from March 15, 2005 through April 28, 2005.

Written comments on the proposed Urgency Ordinance may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93446, provided that the comments are received prior to the time of the public hearing. Oral comments may be made at the hearing. Should you have any questions regarding this application, please call Susan Zaleschuk at (805) 237-3970.

If you challenge the Urgency Ordinance in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at or prior to the public hearing.

Susan Zaleschuk, AICP  
City Planner  
March 4, 2005

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