

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: URGENCY ORDINANCE – EXTENSION OF MORATORIUM ON ESTABLISHING ANY MEDICAL MARIJUANA DISPENSARIES

DATE: APRIL 19, 2005

Needs: For the City Council to consider a request to extend the time period of the urgency ordinance that established a moratorium to prohibit the establishment of any medical marijuana dispensaries.

Facts:

1. The City Council established an urgency ordinance to place a 45-day moratorium on the establishment of any medical marijuana dispensaries on March 15, 2005.
2. The original moratorium provides a limited timeframe for the City to develop and evaluate provisions to regulate this land use.
3. The Supreme Court case of *Ashcroft v. Raich*, which is currently debating whether Federal or State law takes precedence over regulating this issue, has not yet rendered its decision.
4. The City has not had sufficient time since adopting the urgency ordinance one month ago to adequately research and development regulations regarding medical marijuana dispensaries.
5. The urgency ordinance can be extended for an additional 22 months and 15 days.

Analysis
and

Conclusion: Additional time is needed for staff to evaluate the issues involved and to develop appropriate regulations regarding medical marijuana dispensaries. If the City Council extends this moratorium by a four-fifths vote, it would be in effect until March 15, 2007. Should the legal and procedural issues be resolved before that date, a recommendation will be brought forth to consider terminating the moratorium.

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 an extension of the moratorium on establishing any and all medical marijuana dispensaries for an additional 22 months and 15 days, to be in effect until March 15, 2007.

- b.** Amend, modify, or reject the above option.

Attachment:

Urgency Ordinance No. XXX N.S.

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
EXTENDING THE MORATORIUM ESTABLISHED BY URGENCY
ORDINANCE NO. 896 ON THE ESTABLISHMENT OF ANY AND ALL
MEDICAL MARIJUANA DISPENSARIES

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, the City Council has previously adopted a moratorium for the opening of a medical marijuana dispensary; and

WHEREAS, the extension of the moratorium is intended to give staff and City Council and opportunity to research and select the best course of action for its citizens and the community at large and then implement that option without undue time pressures; and

WHEREAS, by law, urgency Ordinance No. 896 N.S., adopted by the City Council on March 15, 2005, may be extended by the City Council for up to twenty two months and fifteen days; 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 extend urgency interim Ordinance No. 896 N.S. 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 extension of Urgency Ordinance No. 896 N.S. shall become effective and shall remain in force and effect from and including April 28, 2005, through and including March 15, 2007, unless extended prior to expiration date.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles on the 19th day of April 2005 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk