

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 13, 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. 05-XXX 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 13, 2007.
  
- b.**   Amend, modify, or reject the above option.

Attachment:

Urgency Ordinance No. 05-XXX

ORDINANCE NO. ~~05-XXX~~

AN ~~EXTENSION OF~~ URGENCY ORDINANCE ~~NO. 05-XXX~~ CONTINUING A MORATORIUM ON ~~THE ESTABLISHMENT OF ANY AND ALL MEDICAL MARIJUANA DISPENSARIES FROM APRIL 28, 2005 THROUGH MARCH 13, 2007,~~ UNLESS EXTENDED BY FURTHER ACTION OF THE CITY COUNCIL.

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

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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. 05-XXX, 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. 05-XXX 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

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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. 05-XXX shall become effective and shall remain in force and effect from and including April 28, 2005, through and including March 13, 2007, unless extended prior to expiration date.

PASSED AND ADOPTED THIS 19th DAY OF APRIL, 2005, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSENT:

Frank Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

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in the South Davis PD-R-T District (the "District") is inconsistent with the General Plan, because, among other things

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, the District's General Plan designation of "General Commercial"

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does not allow the residential uses permitted in a Residential Transitional ("R-T") zoning district and the General Plan purpose of providing commercial service uses is not implemented in the existing zoning for the District

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Further, development or demolition inconsistent with the General Plan could preclude economically viable uses of already existing structures in the South Davis PD-R-T District.

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the revision of zoning in the South Davis PD-R-T District.

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, whether such uses are permitted or conditionally permitted under the existing zoning within the South Davis PD-R-T District.

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unless the applicant applies for and the City grants a conditional use permit for such medical marijuana dispensary.

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Such moratorium includes, but is not limited to, a prohibition on the establishment of any new useies, any modification of an existing use,

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and the issuance of design review permit or approvals, minor modification approvals for permits,

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building permits (except for ordinary maintenance and repair to existing approved structures), and demolition permits.

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Except as provided in this Section 2 and Section 3, no City officer or employee shall approve the issuance of any permit described herein for a property within the South Davis PD-R-T District.

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(b) During this moratorium and any extension of the moratorium, any and all medical marijuana dispensaries and any and all modifications to existing uses to add a medical marijuana dispensary

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ny new use or modification to an existing use in the South Davis PD-R-T District

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shall require application for and issuance of a conditional use permit authorizing such

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. Except as provided herein, the application for, notice and hearing on, and considerations and requirements for issuance of a conditional use permit shall be those set forth in the City's Zoning Code, Article 40.30 of the City's Municipal Code. In addition to any other determinations required for the issuance of a conditional use permit under the City's Zoning Code, Article 40.30, prior to approving or conditionally approving an application for a conditional use permit under this section, the Planning Commission and/or the City Council, as the case may be, shall find that:

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consistent with the City's General Plan

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proposed to be located in a zone that permits retail and medical clinics

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, and the South Davis Specific Plan

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; and

(2) There is a reasonable probability that the proposed

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location and conditions of approval will be consistent with the zoning proposal for

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medical marijuana dispensaries currently being studied and processed;

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(3) There is little or no probability of substantial detriment to or

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interference with the future adopted zoning if the proposed use is ultimately inconsistent with the adopted new zoning; and

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(4) Conditions have been imposed on the operation of the dispensary that will mitigate any significant adverse impacts on the area in which the dispensary will be located and any significant adverse impacts on the City.

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) During this moratorium and any extension of the moratorium, no building permit

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(except for ordinary maintenance and repair to existing approved structures),		
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issued for a medical marijuana dispensary unless		
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a replacement, new or modified use or structure		
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the medical marijuana dispensary has been approved through the issuance of a conditional use permit as set forth above		
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or the City Building Official or City Fire Marshall determines that the structure or building proposed to be demolished is		
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