

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: Medical Marijuana - Mobile Dispensaries
DATE: July 15, 2014

Needs: For the City Council to consider an urgency ordinance to prohibit mobile medical marijuana dispensaries.

Facts:

1. In 1970, Congress enacted the Controlled Substances Act, which makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States.
2. In 1996 California voters approved the Compassionate Use Act (CUA), which legalized use of marijuana for specific medical purposes.
3. California courts have held that the CUA creates a limited exception for criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes.
4. In 2003, the State of California adopted SB 420 , the Medical Marijuana Program, codified in the California Health & Safety Code, which clarifies the scope of the CUA and allows jurisdictions to adopt and enforce rules consistent with SB 420.
5. The CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes". It continues by stating, "Nothing in this article shall prevent a city...from adopting and enforcing...local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective...civil and criminal enforcement of local ordinances..."
6. The City prohibits medical marijuana dispensaries within the city limits
7. Mobile medical marijuana dispensaries have applied for business licenses to operate in the City.
8. A search of the internet shows that at least four mobile marijuana dispensaries currently advertise that they will make marijuana deliveries to locations within the city limits.

Analysis & Conclusion:

The City of Paso Robles Municipal Code bans marijuana dispensaries within city limits.

The number of mobile dispensaries has increased with the number of successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered marijuana dispensaries turned to delivery services instead. There is no reason to not expect the same to happen in Paso Robles.

The exact number of mobile delivery services operating in California is unclear, but a search on the internet indicates that at least four separate marijuana delivery services claim to make deliveries in the City of Paso Robles.

There exists a current and immediate threat to public health, safety and welfare in absence of the City adopting an ordinance prohibiting establishment, operation or use of mobile medical marijuana dispensaries. The failure to prohibit mobile medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the possible negative secondary effects of dispensaries including an increase in violent crime.

Policy

Reference:

2006 Economic Strategy – Quality of Life, Quality of Place.

Fiscal

Impact:

This ordinance will have not financial impact upon the City.

Options:

- a. That the Council introduce for first reading Ordinance No. XXXX N.S. as an urgency ordinance, adding Chapter 9.51 to the El Paso de Robles Municipal Code, to prohibit the licensing or operation of mobile medical marijuana dispensaries ; or
- b. Amend, modify, or reject the above option.

ORDINANCE NO. XXX N.S.

AN URGENCY ORDINANCE OF THE CITY OF EL PASO DE ROBLES AMENDING THE
MUNICIPAL CODE ADDING CHAPTER 9.51 TO PROHIBIT MOBILE MEDICAL
MARIJUANA DISPENSARIES

**THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. Findings. In enacting this ordinance, the City Council finds and takes legislative notice as follows:

1. In 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use; and
2. The Compassionate Use Act ("CUA"), codified at California Health and Safety ("H&S") Code Section 11362.5, was approved by California voters in 1996 and legalized the use of marijuana for specific medical purposes; and
3. California courts have held that the CUA creates a limited exception for criminal liability for seriously ill persons who are in need of medical marijuana for specified medicinal purposes and who obtain and use medical marijuana under limited, specified circumstances; and
4. In 2003 the State of California adopted SB 420, the Medical. Marijuana Program ("MMP"), codified at California Health and Safety ("H&S") Code Section 11362.7, which clarifies the scope of the Compassionate Use Act and allows local jurisdictions to adopt and enforce rules consistent with SB 420; and
5. The CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in this article shall prevent a city . . . from adopting and enforcing . . . local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective . . . civil and criminal enforcement of local ordinances; [and] . . . other laws consistent with this article (H&S Code 11362.83.); and
6. The California Supreme Court has established that neither the CUA nor MMP preempt local regulation in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013); and
7. Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, 210 Cal.App.4th 829 (2012);

"Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case — that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card — then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."; and

8. Marijuana has been associated with criminal activity and dangers to the public. For example, since 2009 there have been eight reported robberies, one shooting, and three fires related to marijuana in San Luis Obispo. In half of those cases the subjects involved possessed medical marijuana cards. Examples of these incidents include:
 - a. In January of 2009, two masked suspects entered a residence and forcibly restrained the occupant while stealing a large quantity of marijuana.
 - b. In January of 2009, suspects held residents at gunpoint while they stole a large quantity of marijuana.
 - c. In June of 2009, suspects forced entry into a residence, blinded the residents with duct tape and held them at gunpoint, and stole a large amount of marijuana.
 - d. In June of 2010, four armed men forced entry into a residence and stole a large quantity of marijuana.
 - e. In January of 2011, three armed men forced entry into a residence and stole a large quantity of marijuana.
 - f. Additionally, in the town of Los Osos a homicide was linked to a home invasion for marijuana robbery. In Morro Bay a home invasion for marijuana robbery resulted in the death of one of the thieves; and
9. A recent study published May 27, 2013 in *JAMA Pediatrics* showed that as marijuana appears in an increasing number of homes, so too does evidence of accidental ingestion of marijuana and marijuana-infused food by young children. More children appear to access marijuana-laced brownies, cookies and beverages sold through marijuana dispensaries, leading to increased emergency room visits. The results can be frightening to such children, who often suffer anxiety attacks when they start to feel unexpected symptoms of being high: hallucinations, dizziness, altered perception and impaired thinking. Ingestion of highly potent marijuana by young children can suppress respiration and even induce coma, according to the study. It is believed that the continued proliferation of mobile dispensaries will provide children greater

access to cookies, candies, brownies and beverages that contain marijuana without warning labels or child-resistant containers; and

10. The City of El Paso de Robles prohibits medical marijuana dispensaries within city limits to prevent crime-related secondary impacts associated with medical marijuana dispensaries and thereby protect the public's health, safety, and welfare; and
11. A San Luis Obispo County Grand Jury report found that home invasions and homicides have resulted from medical marijuana being kept in homes, and recommended that incorporated cities regulate mobile medical marijuana dispensaries; and
12. An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is no reason not to expect the same in El Paso de Robles; and
13. The exact number of mobile delivery services operating in California is unclear, since the state does not keep a registry of mobile medical marijuana distributors; and
14. Mobile marijuana dispensaries currently deliver to El Paso de Robles; and
15. Mobile marijuana dispensaries have applied for business licenses to operate in El Paso de Robles; and
16. Despite the Compassionate Use Act and the Medical Marijuana Program, the United States Attorneys in California have all taken action to enforce the federal Controlled Substances Act against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violation federal law; and
17. Article XI section 7 of the California Constitution provides that the city of El Paso de Robles may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and
18. There exists a current and immediate threat to public health, safety and welfare in the absence of the City adopting an ordinance prohibiting establishment, operation or use of mobile marijuana dispensaries; and
19. The failure to prohibit mobile marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime.

SECTION 2. Urgency. The City Council finds that this Ordinance is necessary as an urgency measure for the immediate preservation of the public peace, health, or safety pursuant to Government Code section 36937 subsection (b).

SECTION 2. Amendment. Chapter 9.51 of the El Paso de Robles Municipal Code is hereby added to read in full as follows:

“Chapter 9.51

“MOBILE MARIJUANA DISPENSARIES

“Sections:

- 9.51.010 Definitions.
- 9.51.020 Mobile Marijuana Dispensaries Prohibited.
- 9.51.030 Marijuana Delivery Prohibited.
- 9.51.040 Public Nuisance Declared.
- 9.51.050 Violations.

9.51.010 Definitions.

The following words and phrases shall, for the purposes of this Chapter, have the meanings respectively ascribed to them by this section, as follows:

Mobile Marijuana Dispensary. “Mobile Marijuana Dispensary” means any clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or delivery, of medical marijuana to a Person.

Person. “Person” means any person, firm, corporation, association, club, society, or other organization. The term Person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

Operation. “Operation” means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a Mobile Marijuana Dispensary.

9.51.020 Mobile Marijuana Dispensaries Prohibited.

Mobile Marijuana Dispensaries are prohibited in the City of El Paso de Robles. No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of any Mobile Marijuana Dispensary within the City.

9.51.030 Marijuana Delivery Prohibited.

A. No Person shall deliver marijuana to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

B. No Person shall deliver any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

9.51.040 Public Nuisance Declared.

Operation of any Mobile Marijuana Dispensary within the City in violation of the provisions of this Chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

9.51.050 Violations.

Violations of this Chapter may be enforced by any applicable law.”

SECTION 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 4. Effective Date. This Urgency Ordinance shall take effect immediately upon its final passage as provided in section 36937 of the Government Code.

SECTION 5. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on _____, 2014, and passed and adopted by the City Council of the City of El Paso de Robles on the ____ day of _____ 2014 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Duane Picanco, Mayor

ATTEST:

Dennis Fansler, City Clerk