

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: Mobile Dispensaries - Update
DATE: August 5, 2014

Needs: For the City Council either to permit staff to process business license request for mobile medical marijuana dispensaries, or to consider ban on such dispensaries.

Facts:

1. A request for a business license for a mobile dispensary was requested from the City.
2. A proposed ordinance to ban mobile medical marijuana dispensaries was presented to Council on July 15, 2014. The City has prohibited "bricks and mortar" medical marijuana dispensaries since 2007.
3. After hearing testimony from a number of persons, Council deadlocked 2-2 on whether to adopt the proposed mobile dispensary ordinance at the July 15, 2014 meeting.
4. Council requested that staff research if there were any state or other regulations pertaining to the operations of a medical marijuana dispensaries. There are currently no such regulations, although proposed bill SB 1262 would regulate physicians, dispensaries, cultivation sites and processing facilities. Dispensaries, for example, would be required to be licensed. A summary of SB 1262 is attached as Exhibit A; the League of California Cities letter of support is attached as Exhibit B.
5. Any delivery service that operates within the City is required to obtain a City business license, which would include a mobile dispensary. Issuance of a business license would allow the City to track which businesses are operating within the City.
6. It is difficult to force mobile dispensaries to obtain a City business license unless they are found to be making deliveries within the City without a license.

Analysis & Conclusion:

On July 15, 2014, the City Council considered a proposed ordinance to ban mobile medical marijuana dispensaries from operating within the City, which would align with the current ban on "brick and mortar" dispensaries.

After hearing public comments, the Council deadlocked on a decision regarding the proposed ordinance, resulting in no action being taken. Council then asked staff to research whether there were any regulations pertaining to the operations of mobile medical marijuana dispensaries. At this time, there are no known regulations for such businesses.

Under the Municipal Code, businesses that deliver their goods or wares within the City that do not have a fixed place of operation within the City are charged an business license fee of \$80.

Policy

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

Fiscal

Impact: The business license fee would be \$80/year, which would be immaterial for the General Fund.

Options:

- a. By motion; that the Council permit staff to issue a business license under the current business license code provisions applicable to delivery services; or
- b. That the Council introduce for first reading Ordinance No. XXXX N.S. adding Chapter 9.51 to the El Paso de Robles Municipal Code, to prohibit the licensing or operation of mobile medical marijuana dispensaries; or
- c. Amend, modify, or reject the above options.

EXHIBIT A

SB 1262 (Correa)

Summary: Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would establish within the Department of Consumer Affairs a Bureau of Medical Marijuana Regulation to license dispensing facilities, cultivation sites, and processing facilities that provide, process, and grow marijuana for medical use, as specified, subject to local ordinances. The bill would require a background check of applicants for licensure to be administered by the Department of Justice . The bill would make these licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The bill would, among other things, require licensees to implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at their facilities, including establishing limited access areas accessible only to authorized facility personnel, and would require these licensees to notify appropriate law enforcement authorities within 24 hours after discovering specified breaches in security. The bill would set forth provisions related to the transportation, testing, and distribution of marijuana. The bill would set forth provisions for the revocation or suspension of a license for a violation of these provisions or of local ordinances, and would require the bureau to make recommendations to the Legislature pertaining to the establishment of a judicial review process. The bill would prohibit the distribution of any form of advertising for physician recommendations for medical marijuana, unless the advertisement bears a specified notice and requires that the advertisement meet specified requirements and not be fraudulent, deceitful, or misleading, as specified. Violation of these provisions would be punishable by a civil fine of up to \$35,000 for each individual violation , or as otherwise specified . This bill contains other related provisions and other existing laws.

EXHIBIT B



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June 13, 2014

The Honorable Susan Bonilla
Chair, Assembly Committee on Business, Professions and Consumer Protection
State Capitol Building, Room 4140
Sacramento, CA 95814

**RE: SB 1262 (Correa) – Medical Marijuana
Notice of Co-Sponsorship**

Dear Assembly Member Bonilla:

On behalf of the League of California Cities, I am pleased to notify you of our sponsorship of Senate Bill 1262 (Correa), in concert with the California Police Chiefs Association.

Since the passage of Proposition 215 in 1996, California has been unable to enact a regulatory structure that both ensures patient access to medical marijuana, while recognizing current provisions in law authorizing local regulation and addressing public safety concerns. We believe that SB 1262 adopts the balanced regulatory approach that is needed and that has been missing, in that it establishes a responsible, health-based regulatory model that addresses the significant deficiencies in the state's existing Medical Marijuana Program.

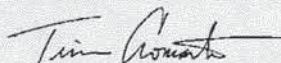
This legislation, in contrast to nearly all previous attempts, acknowledges local regulatory authority by establishing a state licensing scheme that defers to local land use powers; under SB 1262, it will not be possible for a prospective operator to obtain a state license to operate a dispensary or other facility until and unless that operator can produce evidence of local permitting approval. This protects both the jurisdictions that have enacted bans on such facilities, as well as those that have elected to allow and actively regulate them.

SB 1262 squarely addresses the many public safety concerns that arise with a marijuana regulatory scheme by requiring minimum security requirements that must be observed at all dispensaries, as well as transport and inventorying procedures to minimize the possibility of diversion of marijuana for non-medical/recreational uses which could stimulate cartel activity. As proposed to be amended, it further requires a doctor-patient relationship in association with medical marijuana recommendations – a standard that has been adopted by statute in all other states that have legalized marijuana for medical purposes. Finally, SB 1262 addresses the significant public health concerns triggered by medical marijuana, by requiring for the first time the development of uniform testing standards to identify and eliminate contaminants and toxins injurious to human health.

This proposal, which has been carefully vetted with city attorneys and police chiefs, and has received significant input from counties and the medical profession, provides what California has lacked since the passage of Proposition 215 in 1996: a reasonable public safety and health-based approach to implementing a reasonable and responsible regulatory scheme for medical marijuana.

Should you have any questions regarding the League's position, please contact me at (916) 658-8252.

Sincerely,



Tim Cromartie
Legislative Representative

cc: Members, Assembly Business, Professions and Consumer Protection Committee
Eunie Linden, Consultant, Assembly Business, Professions and Consumer Protection Committee
Ted Blanchard, Consultant, Business, Professions and Consumer Protection, Senate Republican Caucus
Senator Lou Correa

ORDINANCE NO. XXX N.S.

AN 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. 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. 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 Ordinance shall take effect thirty (30) days 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:
- ABSENT:
- ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk