TO: MEG WILLIAMSON, ACTING CITY MANAGER

FROM: WARREN FRACE, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: ZONING CODE AMENDMENT 15-007, TO REGULATE CULTIVATION OF MEDICAL MARIJUANA (ZONING CODE SECTIONS 21.08.530 AND 21.33)

DATE: JANUARY 5, 2016

Needs: For the City Council to consider two separate recommendations from the Planning Commission pertaining to a Zoning Ordinance amendment to regulate the cultivation of medical marijuana within the City limits in response to the State of California's Medical Marijuana Regulation and Safety Act.

Facts:

1. The California legislature recently adopted legislation referred to as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643)(MMRSA), to comprehensively regulate medical marijuana ("medical cannabis").

2. The MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation, and distribution. The MMRSA confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

3. Although the MMRSA allows municipalities to regulate or ban cannabis cultivation, manufacturing, transportation, and distribution of medical cannabis within their jurisdictions, it requires local enabling legislation to accomplish some aspects of this. If a city chooses to regulate these activities comprehensively, it must adopt local regulatory standards that are at least as strict as the state's default regulations. Specifically, the MMRSA provides that if a City has not banned or regulated cannabis cultivation by March 1, 2016, then cultivation in that City will be subject only to state law on this issue.

4. As noted in #1 above, the MMRSA is comprised of three separate legislative regulations. AB 266 addresses medical marijuana dispensaries and delivery services. AB 243 addresses cultivation of marijuana, and SB 643 is related to physician recommendations and their professional conduct. A copy of the full legislation text is provided on the City's website at: www.prcity.com.

5. The City's Municipal Code, Zoning Ordinance, Chapter 21.33, adopted in 2007 addresses issues related to AB 266, regarding medical marijuana dispensaries. The City's ordinance currently prohibits establishment of physical medical marijuana dispensaries "brick & mortar". However, (after City Council consideration in 2014), the City's regulations are silent on the regulation of medical marijuana delivery services, and do not regulate this activity.

Consequently, medical marijuana delivery is not prohibited in the City of Paso Robles.

6. The primary issue of concern is related to AB 243 regarding cultivation of medical marijuana. Chapter 21.33 is proposed to be amended to add regulations related to medical marijuana cultivation.

7. General facts and information on these topics are provided in Attachment 1 – "Frequently Asked Questions", and the "Medical Marijuana Regulation and Safety Act – What Cities Need to Know About the New Law and Cultivation", both prepared by the League of California Cities".

8. The proposed Ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment),15060(c)(3) (the activities are not "projects" as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

9. The Planning Commission considered this Zoning Code amendment on December 22, 2015, and recommended the City Council consider the two proposed code amendments included in this staff report as Options A and B, below.

Analysis and Conclusions

As noted above, the primary issue of concern is related to AB 243, regarding cultivation of medical marijuana. AB 243 provides the City the ability to regulate cultivation of medical marijuana by either prohibiting the activity, or permitting and regulating it. The City has experienced complaints from residents whose neighbors grow medical marijuana on their property. Complaints are typically related to concerns in residential neighborhoods for safety (e.g. crime due to break-ins and theft) and odors.

State regulations do not expressly prohibit or control cultivation for personal use for residents that hold a State approved license for consumption and possession of marijuana. Under AB 243, the City has option on whether and/or how to regulate cultivation. <u>If the City does not establish an ordinance specifically addressing this issue on or before March 1, 2015 then the ability to control or regulate cultivation will be superseded by the State.</u> The direction of State control is unknown at this time.

The City has options it may want to consider regarding regulations on marijuana cultivation.

<u>Option "A" – Medical Marijuana Cultivation Ban</u>

An outright prohibition to cultivation would be the simplest to implement, and it would be consistent with the City's existing ordinance in Chapter 21.33, which prohibits establishment of medical marijuana dispensaries. This ordinance section could be modified to include prohibition of medical marijuana cultivation. This would not deny the ability of legal procurement to those who are permitted to consume or possess it since delivery services are not prohibited in the City. Other jurisdictions in the County are considering similar regulations to ban cultivation.

Option "B" – Limited Personal Cultivation Exception

If the City is interested in permitting cultivation for personal use, and prohibit all other potential cultivation activities, (e.g. commercial cultivation), then the City may want to also include standards to reduce the risk of crime and potential nuisances. To reduce the potential for cultivation to be an "attractive nuisance", the City may want to consider only permitting it if it is grown indoors (within a home), so that it is not visible to the public. The City may also want to include limiting the square footage and the number of individual plants permitted for this use within a home. If this is the direction the City would like to move towards, the City Attorney and Police Department recommend that indoor cultivation only permit up to a maximum cultivation area of 50 square feet, and no more than 10 individual plants. This is consistent with at least 16 other cities regulations on personal cultivation standards that staff has researched. It appears that 50 square feet provides a sufficient amount of area to meet the needs for personal use. State licensing requirements would not change.

Other factors to consider include concerns that cultivation can create air quality, energy, and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures. Building permits for changes to the electrical and ventilation system would address this issue.

Staff recommends the Planning Commission forward a "neutral" recommendation to the City Council, and forward both Option "A" and Option "B" ordinances, which are provided in Attachments 2 and 3. This is especially important in light of the looming March 1, 2016 deadline to adopt cultivation regulations or a ban. By forwarding a neutral recommendation, with both draft ordinances provided to implement either choice, the City has the ability to keep this item on track in compliance with the MMRSA. For instance, if only one of the ordinances was recommended to the City Council and the Council wanted to move forward with the alternative not recommended by the Commission, the ordinance would be required to be referred back to the Commission at another date. This would preclude the City from being able to meet the March 1, 2016 deadline, and local control would be relegated to the State.

Therefore, two ordinance amendments to Chapter 21.33 of the Zoning Ordinance, are included with this report. The first ordinance, Option "A", would

establish a total ban on the cultivation of marijuana. The second ordinance, Option "B" would add regulations to allow cultivation for personal use, subject to specific development standards.

At least one California city (Live Oak) has successfully defended its total ban on the cultivation of marijuana for any purpose within that city. Its legally upheld regulation provides that "[m]arijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives, or dispensaries" are prohibited in all zones within the City. The MMRSA allows this approach.

Regardless of either option approved by the City, if the City has enacted an ordinance to either prohibit or regulate it by March 1, 2016, the City would retain the option to modify the regulation at a later date, to either loosen or tighten them.

Policy Reference: Paso Robles General Plan, Paso Robles Zoning Ordinance, Medical Marijuana Regulation and Safety Act, including AB 243, AB 266, and SB 643

Fiscal Impact: None

Options: After consideration of the Planning Commission's recommendation, staff report, public record, and all public testimony, the City Council may wish to consider the following options:

a. Introduce for first reading by title only, Draft Ordinance "A", amending Section 21.33 of the Zoning Code to prohibit the cultivation of Medical Marijuana within the City; or

b. Introduce for first reading by title only, Draft Ordinance "B", amending Section 21.33 of the Zoning Code to prohibit the cultivation of Medical Marijuana within the City, with an exception for limited indoor personal cultivation; or

c. Amend, modify or reject the above noted options.

ATTACHMENTS:

1. League of California Cities Hand-outs: "Frequently Asked Questions", and the "Medical Marijuana Regulation and Safety Act – What Cities Need to Know About the New Law and Cultivation"
2. Draft Ordinance "Option A", to Prohibit Cultivation of Medical Marijuana
3. Draft Ordinance "Option B", to Prohibit Cultivation of Medical Marijuana, with an exception for limited indoor personal cultivation
4. Letter submitted by Chip Tamagni on 12/22/15

November 6, 2015

Frequently Asked Questions (FAQs)

Medical Marijuana Regulation and Safety Act[1]

Topic #1: Cultivation

The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts land use regulations or ordinances regulating or prohibiting the cultivation of marijuana -- either expressly or otherwise under the principles of permissive zoning -- prior to ***March 1, 2016.***[2]

1. **Question**: If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

Answer: Yes. Under *Live Oak*[3], a city can ban all marijuana cultivation -- even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

2. **Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?[4]

Answer: No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

3. **Question**: Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

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[1] AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

[2] Health & Safety 11362.777(c).

[3] *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

[4] Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

Answer: No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.[5] If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.[6]

4. **Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance that permits the cultivation of six plants per residence prior to March 1, 2016?

Answer: Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance "regulating or prohibiting the cultivation of marijuana." An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance "regulating" marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

5. **Question:** Must the cultivation prohibition be adopted as part of a city's zoning code? Could it be adopted instead under the city's business licenses and regulations?

Answer: It's not possible to answer "yes" or "no." AB 243 requires a "land use regulation or ordinance." Whether the phrase "land use" requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city's municipal code.

6. **Question**: Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

Answer: Yes. There's nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so before March 1, 2016.

7. **Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective in a city by March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

[5] Business & Professions Code 19319; Health & Safety 11362.777(g).
[6] Health & Safety Code 11362.777(g).

Answer: Probably not. The new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that "prohibits" cultivation.

8. **Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

Answer: Yes, with urgency findings relating to the statutory deadline.

Topic #2: Delivery

Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.[7]

9. **Question**: Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

Answer: There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city. The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

10. Question: What are the quantities that delivery services will be authorized to transport?

Answer: The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered "delivery" but rather "transport" triggering heightened security requirements while the product is being moved.

[7] Health & Safety 19340.

Topic 3: Dispensaries and Retail Operations

11. **Question:** Will cities still be able to ban dispensaries?

Answer: Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

12. **Question:** Can a city allow dispensaries and prohibit delivery services?

Answer: Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

Topic #4: Other Questions

13. **Question:** Does the new legislation make any distinction between "not-for-profit" and "for profit" medical marijuana businesses?

Answer: No. There is no distinction in the new legislation between medical marijuana businesses that operate "for profit" and those that operate on a "not-for-profit" basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

14. **Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

Answer: The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to "manufacture" edibles. The DPH standards are "minimum standards." A city may adopt additional stricter standards, requirements and regulations regarding "edibles" (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

15. **Question:** The new law says: "upon approval of the state, cities may enforce state law". If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down

before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

Answer: No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

16. **Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

Answer: The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section19320). A city's municipal code will determine whether a "use" includes a post office box.

17. **Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

Answer: The new law does not specifically address the issue of extraction at all – other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

18. **Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

Answer: A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

19. **Question:** What types of medical marijuana businesses require a State license?

Answer: The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

20. **Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

Answer: No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: https://www.oag.ca.gov/initiatives/active-measures.

21. **Question:** Does the new law protect the privacy of patients and primary caregivers?

Answer: Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of the State or any city to perform official duties.

22. **Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

Answer: Yes. The State licensing authority is required to prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

23. **Question:** Does the new law address food trucks that sell marijuana edibles?

Answer: No. The operation of food trucks are within the control and regulation of cities and county health departments.

PLEASE NOTE: This document will be updated periodically, as needed, and will remain available at www.cacities.org. As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.

MEDICAL MARIJUANA REGULATION AND SAFETY ACT[1]
What Cities Need to Know About the New Law and Cultivation

OVERVIEW
Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license[2].
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city ("dual licensing").
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

CULTIVATION
Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016,** the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

1 AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

2 The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

CULTIVATION
Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a "permissive zoning" code. **Need to take action.**

  ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an "urgency ordinance," or second reading must occur on or before January 29, 2016.

- **City #2:** Municipal Code that is a "permissive zoning" code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

  ACTION REQUIRED: (1) Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

  - States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
  - Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
  - States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
  - Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.

LEAGUE® OF CALIFORNIA CITIES

ORDINANCE NO. ____.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES ADDING SECTION 21.08.530 AND AMENDING CHAPTER 21.33 OF THE MUNICIPAL CODE REGARDING MARIJUANA CULTIVATION

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996 ("CUA"), decriminalizing the use of marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban medical marijuana land uses; and

WHEREAS, under the federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana is unlawful and subject to federal prosecution, regardless of a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate the licensing of marijuana cultivation uses and sites; and

WHEREAS, the Act states that, commencing March 1, 2016, the State shall become the sole licensing authority for marijuana cultivation in those cities and counties that do not have land use regulations or ordinances that regulate or prohibit marijuana cultivation; and

WHEREAS, the City Council previously adopted Ordinance No. 926 to prohibit medical marijuana dispensaries within the City in order to maintain the public health, safety and welfare, but existing municipal regulations do not address marijuana cultivation; and

WHEREAS, some California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests; and
WHEREAS, the City Council desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries, including marijuana cultivation; and

WHEREAS, the City Council desires to amend the Municipal Code to clarify the existing prohibition of marijuana dispensaries to include marijuana cultivation, and to expressly reserve any future local licensing scheme granted by the Act.

WHEREAS, the Planning Commission held a public hearing on December 22, 2015, where they considered the staff report and public testimony prior to recommending the proposed code text amendment.

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

SECTION 1. Recitals. The City Council hereby finds that the above recitals are true and incorporates them into this Ordinance by this reference.

SECTION 2. Findings. The City Council hereby finds this Ordinance is consistent with the General Plan, as found and recommended by the Planning Commission pursuant to Chapter 21.24 of the Paso Robles Municipal Code. The City Council further finds that this Ordinance helps promote and maintain the public's health, safety and welfare by retaining local land use control over medical marijuana uses within its borders, and by avoiding potentially adverse secondary impacts of marijuana cultivation upon implementation of the Medical Marijuana Regulation and Safety Act.

SECTION 3. Section 21.08.530 is hereby added to the Paso Robles Municipal Code to read as follows:

"21.08.530 – Marijuana cultivation.

"Marijuana cultivation" (land use), means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis."

SECTION 4. Chapter 21.33 of the Paso Robles Municipal Code is hereby revised in its entirety to read as set forth in Exhibit A, attached hereto and incorporated by this reference.

SECTION 5. 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 6. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 7. 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 January 5, 2015, and passed and adopted by the City Council of the City of El Paso de Robles on the 19th day of January 2015 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Steve W. Martin, Mayor

ATTEST:

_____
Dennis Fansler, City Clerk

EXHIBIT "A"
(amendments underlined)

Chapter 21.33 - MEDICAL MARIJUANA REGULATIONS

21.33.010 - Purpose.

The purpose and intent of this chapter is to preserve the city's local land use authority regarding medical marijuana uses, and to prohibit medical marijuana dispensaries and marijuana cultivation within the city. It is recognized that it is a federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries and marijuana cultivation, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare.

21.33.020 - Definitions.

As used in this chapter:

"Marijuana cultivation" (land use), means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis.

"Medical marijuana dispensary" (land use), means a facility or location which provides, makes available or distributes medical marijuana to a primary caregiver, a qualified patient, or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5, et seq.

21.33.030 - Prohibited within the City of El Paso de Robles.

A. The establishment or operation of a medical marijuana dispensary as defined in this chapter shall be prohibited within the city limits.

B. Marijuana cultivation shall be considered a prohibited use in all zoning districts of the city, regardless of whether undertaken for personal or commercial purposes.

Attachment 3
Draft Ordinance B – Cultivation Ban with
exception for limited indoor cultivation

ORDINANCE NO. ____.

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WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban medical marijuana land uses; and

WHEREAS, under the federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana is unlawful and subject to federal prosecution, regardless of a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate the licensing of marijuana cultivation uses and sites; and

WHEREAS, the Act states that, commencing March 1, 2016, the State shall become the sole licensing authority for marijuana cultivation in those cities and counties that do not have land use regulations or ordinances that regulate or prohibit marijuana cultivation; and

WHEREAS, the City Council previously adopted Ordinance No. 926 to prohibit medical marijuana dispensaries within the City in order to maintain the public health, safety and welfare, but existing municipal regulations do not address marijuana cultivation; and

WHEREAS, some California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests; and
WHEREAS, the City Council desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries, including marijuana cultivation; and

WHEREAS, the City Council desires to amend the Municipal Code to clarify the existing prohibition of marijuana dispensaries to include the regulation of marijuana cultivation, and to expressly reserve any future local licensing scheme granted by the Act.

WHEREAS, the Planning Commission held a public hearing on December 22, 2015, where they considered the staff report and public testimony prior to recommending the proposed code text amendment.

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

SECTION 1. Recitals. The City Council hereby finds that the above recitals are true and incorporates them into this Ordinance by this reference.

SECTION 2. Findings. The City Council hereby finds this Ordinance is consistent with the General Plan, as found and recommended by the Planning Commission pursuant to Chapter 21.24 of the Paso Robles Municipal Code. The City Council further finds that this Ordinance helps promote and maintain the public's health, safety and welfare by retaining local land use control over medical marijuana uses within its borders, and by mitigating potentially adverse secondary impacts of marijuana cultivation by prohibiting commercial marijuana cultivation and regulating certain limited, indoor personal cultivation.

SECTION 3. Section 21.08.530 is hereby added to the Paso Robles Municipal Code to read as follows:

"21.08.530 – Marijuana cultivation.

"Marijuana cultivation" (land use), means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis."

SECTION 4. Chapter 21.33 of the Paso Robles Municipal Code is hereby revised in its entirety to read as set forth in Exhibit A, attached hereto and incorporated by this reference.

SECTION 5. 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 6. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 7. 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 January 5, 2015, and passed and adopted by the City Council of the City of El Paso de Robles on the 19th day of January 2015 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Steve W. Martin, Mayor

ATTEST:

_____
Dennis Fansler, City Clerk

EXHIBIT "A"
(amendments underlined)

Chapter 21.33 - MEDICAL MARIJUANA REGULATIONS

21.33.010 - Purpose.

The purpose and intent of this chapter is to preserve the city's local land use authority regarding medical marijuana uses, and to prohibit medical marijuana dispensaries and regulate marijuana cultivation within the city. It is recognized that it is a federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries and marijuana cultivation, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare.

21.33.020 - Definitions.

As used in this chapter:

"Marijuana cultivation" (land use), means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis.

"Medical marijuana dispensary" (land use), means a facility or location which provides, makes available or distributes medical marijuana to a primary caregiver, a qualified patient, or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5, et seq.

21.33.030 - Prohibited within the City of El Paso de Robles.

A. The establishment or operation of a medical marijuana dispensary as defined in this chapter shall be prohibited within the city limits.

B. Marijuana cultivation shall be prohibited within the city limits, except that limited indoor cultivation for personal use shall be permitted in residential districts subject to the following restrictions:

1. The marijuana is cultivated by a qualified patient exclusively for his or her own personal medical use in accordance with California Health and Safety Code sections 11362.5 et seq., and shall not be provided, sold, or otherwise distributed to any other person, collective or cooperative.

2. The marijuana is cultivated inside a residential dwelling in which the qualified patient permanently resides.

3. No more than fifty (50) contiguous square feet of the interior of the dwelling shall be used for marijuana cultivation, and no more than 10 individual plants may be grown on the premises, regardless of how many qualified patients are residing on the property.

4. The area used for cultivation must comply with all Uniform Codes as adopted by the city, including but not limited to the California Building, Electrical and Fire Codes, and all other provisions of this code, including Chapter 9.06 pertaining to nuisances.

5. The marijuana cultivation is concealed so that it is not visible from the exterior of the property, the public right-of-way, and/or neighboring properties.

6. The use of flammable or combustible products, including but not limited to propane and butane, for marijuana cultivation is prohibited.

7. The marijuana cultivation shall not be maintained in a manner so as to constitute a health or safety hazard for the occupants of the property or adjoining properties, including but not limited to the use or storage of materials, products or wastes that create excessive heat, noxious gasses, odors, smoke, noise, vibration or other fire hazards.

10. Nothing in this subsection is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting medical marijuana cultivation by tenants.

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SELECT COMMITTEES
CHAIR: DIGITAL DIVIDE IN RURAL CALIFORNIA
CAREER TECHNICAL EDUCATION AND BUILDING A 21ST CENTURY WORKFORCE
WINE

Assembly
California Legislature

JIM WOOD
ASSEMBLYMEMBER, SECOND DISTRICT

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SACRAMENTO, CA 94249-0002
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The Marijuana Regulation and Safety Act's March 1st Deadline

An open letter to County and City Government Officials:

Like many of my colleagues, I began my public service career at the local level where decisions made in Sacramento often have a profound impact on the decisions we make in our communities. Over the past several weeks, I have learned that cities and counties are scrambling to put regulations regarding medical marijuana in place ahead of a March 1st deadline that was inadvertently included in AB243 of the Medical Marijuana Regulation and Safety Act (MMRSA). As a former local elected I understand this reaction. However, I am writing this letter to clarify some of the confusion that has resulted from the inclusion of the March 1st deadline in the MMRSA.

The MMRSA will bring a multi-billion dollar industry that has grown up largely in the shadows into the light. Ultimately, the goal is to provide Californians with the legal, consumer, and environmental protections we have come to expect from any other industry.

During the scramble at the end of the legislative session this year, an inadvertent drafting error placed a deadline on local jurisdictions, requiring them to adopt their own land use regulations for medical cannabis cultivation by March 1, 2016, or turn that responsibility over to the state. As soon as I was aware of the error I published a letter in the Assembly Journal, the official record of the Assembly, declaring my intention to pass urgency legislation as soon as the legislature reconvenes in January. The compromise agreement with the Governor's office did not include the March 1st deadline and this urgency legislation will ensure that the MMRSA's legislative intent is not altered. I have already amended one of my bills with language that will strike the deadline and maintain a local jurisdiction's ability to create their own regulations. As an urgency measure, the law will go into effect as soon as it is signed by the Governor.

My intent to remove the deadline has bi-partisan and stakeholder support. The Governor's office is prepared to partner with my office to ensure local control on this issue. I appreciate the Governor's acknowledgement of this drafting error and his office's willingness to work with me to quickly resolve the problem. Even if my urgency measure is not signed until after March 1st,

the Bureau of Medical Marijuana Regulation (BMMR), the entity responsible for developing the State's regulations, currently exists on paper only. It will be many months before the Bureau has the capacity to develop and enforce statewide regulations. Additionally we have received legal feedback confirming that once my urgency measure is in effect jurisdictions will retain the local control they need.

I am confident that my colleagues and I will eliminate the March 1st deadline before it becomes a realistic problem as opposed to a theoretical concern for local lawmakers.

Respectfully,

JIM WOOD
ASSEMBLYMEMBER, 2ND DISTRICT

NOTICE OF PUBLIC HEARING

CITY OF EL PASO DE ROBLES CITY COUNCIL TO CONSIDER OPTIONS FOR A ZONING ORDINANCE AMENDMENT TO SECTION 21.33 REGARDING THE REGULATION OF THE CULTIVATION OF MEDICAL MARIJUANA

NOTICE IS HEREBY GIVEN that the City Council of the City of El Paso de Robles will hold a Public Hearing on Tuesday, January 5, 2016, at 6:30 p.m. at City Hall, 1000 Spring Street, Paso Robles, California, in the City Council Chambers, to consider the following project:

> **A Zoning Ordinance amendment to Section 21.33 of the Zoning Code to regulate the cultivation of medical marijuana within City limits in response to the State of California's Medical Marijuana Regulation and Safety Act.**

In accordance with the California Environmental Quality Act (CEQA), Guidelines Section 15061(b)(3), this project is exempt from environmental review, since there is no possibility that the proposed action may have a significant effect on the environment.

The proposed ordinance options and staff report may be reviewed at the Community Development Department, 1000 Spring Street, Paso Robles, California or on the City's website at www.prcity.com on December 30, 2015. Copies may be purchased for the cost of reproduction. The City Council will consider recommendations of the Planning Commission made at the Planning Commission meeting on December 22, 2015.

Written comments on the proposed ordinance options may be sent to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93446, or emailed to the City 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 issue, please contact Susan DeCarli at (805) 237-3970 or sdecarli@prcity.com.

If you challenge this project 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 Planning Commission at or prior to the public hearing.

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Susan DeCarli
City Planner

Please publish once on Sunday, December 27, 2015.

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