



City Council Agenda Report

From: Susan DeCarli, City Planner

Subject: Rezone 18-001 - Medical Cannabis Delivery Services Ordinance

Date: March 6, 2018

Facts

1. Chapter 21.33 Cannabis Regulations of the City Zoning Ordinance in the Municipal Code, includes regulations on personal (recreational), medical, and commercial cannabis uses.
2. The ordinance currently prohibits recreational or medical cannabis (brick and mortar) establishments including, but not limited to, retail sales, manufacturing, testing, packaging, storing, or cultivation. The City's regulations allow for indoor personal cannabis cultivation in compliance with State provisions.
3. The City does not currently regulate medical cannabis delivery services. However, delivery service business licenses have been issued if the business meets one of the following conditions: (1) the business is based in the City; or (2) the business is based outside of the City and provides delivery services to local residents.
4. Pursuant to Business and Professions Code section 26070(a)(1), effective January 1, 2018, State law requires all cannabis retailers, including non-storefront retailers/delivery services to operate from a commercial location licensed by the State and local authority. The commercial location may not be located within a residence. Additionally, all cannabis business owners must obtain a license from the State Bureau of Cannabis Control (BCC), in order to legally operate.
5. Currently, the City's regulations do not permit commercial locations for cannabis businesses, therefore, the City cannot assure the BCC that medical marijuana delivery service businesses applying for a BCC license comply with local requirements. Thus, the five existing cannabis delivery services based in Paso Robles cannot legally operate without the City enacting changes to the existing medical cannabis regulations.
6. Local land use compatibility implications are anticipated; therefore, it is recommended that future policy decisions be thoughtfully analyzed with public input (which may take a significant amount of time and resources). In the interim, the City has prepared a near-term option to allow existing businesses to comply with local provisions and BCC licensing regulations.
7. The proposed amendments to Sections 21.33.020 and 21.33.040 of the Zoning Ordinance/Municipal Code would authorize the issuance of a one-year Temporary Use Permit (TUP), while the City continues to analyze potential long-term policy solutions. Under this amendment, only businesses that (i) had a valid City business license issued by the City; and (ii) were physically located in the City prior to January 1, 2018 would qualify for a TUP. Currently, five existing medical cannabis delivery businesses appear to meet these proposed TUP requirements. All TUPs will be approved administratively, at a staff level.
8. As this involves a change to the Zoning Code, the Planning Commission considered this ordinance on February 13, 2018, and recommended approval of the ordinance, as proposed, to the City Council. (See Attachment 1, Draft Ordinance.)
9. Per Section 15061(b)(3) of the State California Environmental Quality Act (CEQA) Guidelines, this ordinance would be exempt from environmental review, since it can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment.

Options

1. Take no action.
2. Approve an ordinance that authorizes issuance of a TUP, effective for up to one-year, to permit the establishment of non-storefront, medical cannabis delivery services to local residents, to permit existing businesses to be in compliance with State licensing requirements.
3. Approve the proposed ordinance, with modifications.
4. Continue this item and provide direction to staff for additional analysis.
5. Deny the proposed ordinance, with specific Findings for denial from the City Council.

Analysis and Conclusions

The City's Zoning Code provisions are currently not consistent with new State regulations that preclude City licensed medical cannabis delivery service businesses to operate legally within the City of Paso Robles. The City would like to take the time necessary to involve the community in preparing long-term solutions to address this type of use in the City in compliance with State law. The proposed draft ordinance (attached) would require approval of a TUP that would be effective for up to one year while the City works on preparing an ordinance to address this issue for the long-term.

CEQA Analysis. As noted in the Facts above, per Section 15061(b)(3) of the State CEQA Guidelines, this proposed ordinance is exempt from CEQA review.

The ordinance is proposed in both urgency and regular form. Because businesses previously operating legally in the City have not been able to operate since January 1, due to the new state regulations, the City is attempting to restore their ability to operate as quickly as possible. However, an urgency ordinance requires a 4/5 vote, and the need for urgency can be challenged in court. As a result, the ordinance is also proposed as a regular ordinance.

Fiscal Impact

This ordinance would allow a limited number of businesses to obtain or renew their business license, which would generate some additional tax revenue that would positively affect the City's General Fund.

Recommendation

1. Introduce and hold first reading of Ordinance No. XXX, authorizing issuance of Temporary Use Permits, effective for up to one-year, permitting City-based non-storefront retailers of medical cannabis to operate within the City.
2. Adopt urgency Ordinance No. XXX+1, authorizing issuance of Temporary Use Permits, effective for up to one-year, permitting City-based non-storefront retailers of medical cannabis to operate within the City.

Attachments

1. Draft Ordinance No. XXX
2. Draft Urgency Ordinance No. XXX+1

ORDINANCE NO. XXXX N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTIONS 21.33.020 and 21.33.040 OF THE PASO ROBLES MUNICIPAL CODE AND
AUTHORIZING THE ISSUANCE OF TEMPORARY USE PERMITS FOR
DELIVERY-ONLY MEDICAL MARIJUANA RETAIL BUSINESSES

WHEREAS, Section 21.33.040 of the Paso Robles Municipal Code prohibits the establishment of a medical marijuana dispensary, but allows for the operation of medical marijuana delivery service businesses; and

WHEREAS, Section 21.33.050 of the Paso Robles Municipal Code prohibits the establishment or operation of any business of commercial marijuana activity; and

WHEREAS, pursuant to Business and Professions Code section 26070(a)(1), state law requires that all cannabis retailers, including marijuana retailers that will not be open to the public and that conduct sales exclusively by delivery, must operate from a physical location licensed by the State; and

WHEREAS, such non-storefront, delivery-only cannabis businesses may not obtain a temporary State license to operate without demonstrating proof of compliance with local ordinances, including obtaining all necessary local land use approvals; and

WHEREAS, non-storefront, delivery-only cannabis businesses that had obtained City business licenses prior to January 1, 2018 and that are located in the City are therefore currently prohibited from conducting any deliveries of cannabis until they obtain the applicable State license to operate; and

WHEREAS, this has created an unintended and substantial hardship for local medical cannabis patients and caregivers, who cannot receive medically prescribed marijuana pursuant to a physician recommendation from their customary delivery service of choice if that delivery service has not been able to obtain a state license; and

WHEREAS, several Paso Robles residents have expressed concern, hardship and urgency over the current inability to receive medical marijuana from a patient's historic and/or current customary delivery service necessary for the treatment of existing medical conditions because of the licensing requirements adopted by the State and the regulations adopted by the City; and

WHEREAS, this Ordinance is intended only to provide a near-term limited allowance of delivery-only, non-storefront medical marijuana businesses that were both licensed to do business in Paso Robles and were physically located within the City limits as of January 1, 2018, in order for the City to more comprehensively consider the land use issues related to the location of such businesses and related matters; and

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

Section 1. Recitals are True and Correct. The City Council hereby findings that the recitals above are true and correct and incorporated herein.

Section 2. Amendment to Section 21.33.020

The following definition is added at the end of Section 21.33.020 to read as follows:

“O. “Medical marijuana” means marijuana or cannabis used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code Section 11362.5 et seq.) and the Medical Cannabis Program Act (California Health and Safety Code Section 11362.7 et seq.), as they may be amended from time to time.”

Section 3. Amendment to Section 21.33.040

The following paragraph D. is hereby added to Section 21.33.040 to read as follows:

“D. The Community Development Director is authorized to issue certain temporary use permits for the delivery of medical marijuana to qualified patients in the City, subject to all of the following rules and requirements:

1. The temporary use permits shall be limited to authorize only delivery of medical marijuana to qualified patients from the subject site location identified in the permit. The temporary use permit shall not authorize any public storefront or other retail sale or distribution of marijuana.
2. In order to obtain a temporary use permit for medical marijuana deliveries, eligible applicants shall apply on or before May 1, 2018 for a temporary use permit for a medical marijuana delivery-only retail business to operate at the proposed location. Failure to timely submit applications for a temporary use permit and maintain a valid City Business License shall be grounds for denial of a temporary use permit. No medical marijuana delivery services shall be conducted in the City unless and until a temporary use permit and Business License have been issued by the City for the subject location and a license from the California Bureau of Cannabis Control has been issued for the business.
3. Applicants for a temporary use permit shall provide proof, to the satisfaction of the Community Development Director, that (i) the applicant had a valid Business License issued by the City of Paso Robles prior to January 1, 2018 to deliver medical marijuana to qualified patients in the City of Paso Robles; (ii) the address listed on the Business License is located within the City of Paso Robles; and (iii) the applicant has applied for a non-retail storefront license to operate from the California Bureau of Cannabis Control.
4. Prior to taking action on a temporary use permit application, the Community Development Director shall comply with the existing temporary use permit procedures set forth in Paso Robles Municipal Code Chapter 21.23C.
5. Deliveries of medical marijuana pursuant to the temporary use permit shall be subject to the delivery requirements set forth in Paso Robles Municipal Code paragraph C. of section 21.33.040, in addition to all applicable State law requirements.
6. The temporary use permit shall be valid for a term of no more than one (1) year from the date of adoption of the ordinance enacting this paragraph D. of section 21.33.040, and shall be expressly terminated, revoked, and invalid upon such expiration. Failure to obtain a license from the California Bureau of Cannabis Control by May 31, 2018 shall be grounds for revocation of the temporary use permit. The temporary use permit shall be understood and acknowledged by the applicant as conditioned upon it being temporary, and that it does not confer any right, entitlement or guarantee to future use(s) or property, nor shall the temporary use permit operate as any guarantee or entitlement to issuance of a conditional use permit or other permit for the operation of the business at that or any other location. Applicants for a temporary use permit shall expressly waive any right, title or claim to any vested right to continue conducting medical marijuana deliveries from a location in the City beyond the term of the temporary use permit.

The Community Development Director or his or her designee is authorized to develop an appropriate application form and to administer reasonable guidelines and policies necessary to carry out the purposes and intent of this paragraph D. of Section 21.33.040.”

Section 4. Existing Prohibitions Not Affected.

All marijuana uses already permitted or prohibited by the City’s Code shall remain permitted and prohibited and shall not be affected or modified by this Ordinance.

Section 5. CEQA Finding.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment because this Ordinance is narrowly tailored to mitigate unintended disruption in the ability of medical marijuana patients to receive medical marijuana on a short-term, non-permanent basis subject to existing locational restrictions and regulatory requirements already set forth in the City’s Municipal Code for marijuana businesses already permitted to operate in the City. This Ordinance is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 6. Publication. The City Clerk shall certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the Ordinance to be published once within 15 days after passage in a newspaper of general circulation published and circulated in the City in accordance with Government Code section 36933.

INTRODUCED at a regular meeting of the City Council held on March 6, 2018, for first reading by the City Council of the City of El Paso de Robles, and adopted on the ___ day of _____, 2018, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Steven W. Martin, Mayor

Attest:

Kristen L. Buxkemper, Deputy City Clerk

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF EL PASO DE ROBLES AMENDING SECTIONS 21.33.020 AND 21.33.040 OF
THE PASO ROBLES MUNICIPAL CODE AND AUTHORIZING THE
ISSUANCE OF TEMPORARY USE PERMITS FOR
DELIVERY-ONLY MEDICAL MARIJUANA RETAIL BUSINESSES**

WHEREAS, Section 21.33.040 of the Paso Robles Municipal Code prohibits the establishment of a medical marijuana dispensary, but allows for the operation of medical marijuana delivery service businesses; and

WHEREAS, Section 21.33.050 of the Paso Robles Municipal Code prohibits the establishment or operation of any business of commercial marijuana activity; and

WHEREAS, pursuant to Business and Professions Code section 26070(a)(1), state law requires that all cannabis retailers, including marijuana retailers that will not be open to the public and that conduct sales exclusively by delivery, must operate from a physical location licensed by the State; and

WHEREAS, such non-storefront, delivery-only cannabis businesses may not obtain a temporary State license to operate without demonstrating proof of compliance with local ordinances, including obtaining all necessary local land use approvals; and

WHEREAS, non-storefront, delivery-only cannabis businesses that had obtained City business licenses prior to January 1, 2018 and that are located in the City are therefore currently prohibited from conducting any deliveries of cannabis until they obtain the applicable State license to operate; and

WHEREAS, this has created an unintended and substantial hardship for local medical cannabis patients and caregivers, who cannot receive medically prescribed marijuana pursuant to a physician recommendation from their customary delivery service of choice if that delivery service has not been able to obtain a state license; and

WHEREAS, several Paso Robles residents have expressed concern, hardship and urgency over the current inability to receive medical marijuana from a patient's historic and/or current customary delivery service necessary for the treatment of existing medical conditions because of the licensing requirements adopted by the State and the regulations adopted by the City; and

WHEREAS, this Ordinance is intended only to provide a short-term limited allowance of delivery-only, non-storefront medical marijuana businesses that were both licensed to do business in Paso Robles and were physically located within the City limits as of January 1, 2018, in order for the City to more comprehensively consider the land use issues related to the location of such businesses and related matters; and

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

Section 1. Urgency Findings. The City Council hereby incorporates by reference and adopts the recitals of this Urgency Ordinance. The City Council further finds that this Urgency Ordinance is necessary to promote the immediate preservation of the public peace, health and safety of the community by allowing certain existing businesses to continue to deliver medical marijuana to local cannabis patients and caregivers. This Urgency Ordinance also will provide additional time for the City Council to consider and determine the numerous land use issues related to reconciling the State’s licensing regulations and City policies.

Section 2. Amendment to Section 21.33.020

The following definition is added at the end of Section 21.33.020 to read as follows:

“O. “Medical marijuana” means marijuana or cannabis used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code Section 11362.5 et seq.) and the Medical Cannabis Program Act (California Health and Safety Code Section 11362.7 et seq.), as they may be amended from time to time.”

Section 3. Amendment to Section 21.33.040

The following paragraph D. is hereby added to Section 21.33.040 to read as follows:

“D. The Community Development Director is authorized to issue certain temporary use permits for the delivery of medical marijuana to qualified patients in the City, subject to all of the following rules and requirements:

1. The temporary use permits shall be limited to authorize only delivery of medical marijuana to qualified patients from the subject site location identified in the permit. The temporary use permit shall not authorize any public storefront or other retail sale or distribution of marijuana.
2. In order to obtain a temporary use permit for medical marijuana deliveries, eligible applicants shall apply on or before May 1, 2018 for a temporary use permit for a medical marijuana delivery-only retail business to operate at the proposed location. Failure to timely submit applications for a temporary use permit and maintain a valid City Business License shall be grounds for denial of a temporary use permit. No medical marijuana delivery services shall be conducted in the City unless and until a temporary use permit and Business License have been issued by the City for the subject location and a license from the California Bureau of Cannabis Control has been issued for the business.
3. Applicants for a temporary use permit shall provide proof, to the satisfaction of the Community Development Director, that (i) the applicant had a valid Business

License issued by the City of Paso Robles prior to January 1, 2018 to deliver medical marijuana to qualified patients in the City of Paso Robles; (ii) the address listed on the Business License is located within the City of Paso Robles; and (iii) the applicant has applied for a non-retail storefront license to operate from the California Bureau of Cannabis Control.

4. Prior to taking action on a temporary use permit application, the Community Development Director shall comply with the existing temporary use permit procedures set forth in Paso Robles Municipal Code Chapter 21.23C.
5. Deliveries of medical marijuana pursuant to the temporary use permit shall be subject to the delivery requirements set forth in Paso Robles Municipal Code paragraph C. of section 21.33.040, in addition to all applicable State law requirements.
6. The temporary use permit shall be valid for a term of no more than one (1) year from the date of adoption of the ordinance enacting this paragraph D. of section 21.33.040, and shall be expressly terminated, revoked, and invalid upon such expiration. Failure to obtain a license from the California Bureau of Cannabis Control by May 31, 2018 shall be grounds for revocation of the temporary use permit. The temporary use permit shall be understood and acknowledged by the applicant as conditioned upon it being temporary, and that it does not confer any right, entitlement or guarantee to future use(s) or property, nor shall the temporary use permit operate as any guarantee or entitlement to issuance of a conditional use permit or other permit for the operation of the business at that or any other location. Applicants for a temporary use permit shall expressly waive any right, title or claim to any vested right to continue conducting medical marijuana deliveries from a location in the City beyond the term of the temporary use permit.

The Community Development Director or his or her designee is authorized to develop an appropriate application form and to administer reasonable guidelines and policies necessary to carry out the purposes and intent of this paragraph D. of Section 21.33.040.”

Section 4. Existing Prohibitions Not Affected.

All marijuana uses already permitted or prohibited by the City’s Code shall remain permitted and prohibited and shall not be affected or modified by this Ordinance.

Section 5. CEQA Finding.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment because this Ordinance is narrowly tailored to mitigate unintended disruption in the ability of medical marijuana patients to receive medical marijuana on a short-term, non-permanent basis subject to existing locational restrictions and regulatory requirements already set forth in the City’s Municipal Code for marijuana businesses already permitted to operate in the City. This Ordinance

is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 6. Effective Date. This Urgency Ordinance shall become effective immediately following its adoption.

Section 7. Publication. The City Clerk shall certify to the passage of this Urgency Ordinance by the City Council of the City of El Paso de Robles, California. No later than fifteen (15) days following the passage of this Urgency Ordinance, the Urgency Ordinance, along with the names of the City Council members voting for and against the Urgency Ordinance, shall be published in a newspaper of general circulation published and circulated in the City in accordance with Government Code section 36933.

PASSED AND ADOPTED at a regular meeting of the City Council held on March 6, 2018, by the following vote of at least four-fifths of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven W. Martin, Mayor

Attest:

Kristy Buxkemper, Deputy City Clerk