



City Council Agenda Report

From: Susan DeCarli, City Planner

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

Date: March 20, 2018

Facts

1. The City Council held a public hearing on March 6, 2018, and unanimously approved the urgency and regular ordinances to regulate medical cannabis delivery services, and introduced the (regular) ordinance for first reading by the City Council.
2. 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 (5) existing medical cannabis delivery businesses appear to meet these proposed TUP requirements. All TUPs will be approved administratively, at a staff level.
3. The proposed action for the March 20, 2018 Council meeting is to adopt the regular ordinance on second reading by consent. No substantive changes have been made to the proposed ordinance since the first reading. A summary of the proposed ordinances, approved by the City Attorney, was printed in the Tribune newspaper. The staff report from the March 6, 2018 meeting is summarized below for information.

Analysis and Conclusions

The City's Zoning Code provisions are currently not consistent with new State regulations and preclude City licensed medical cannabis delivery service businesses to operate legally within the City of Paso Robles. 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 (5) existing medical cannabis delivery businesses appear to meet these proposed TUP requirements. All TUPs will be approved administratively, at a staff level.

Fiscal Impact

This ordinance would allow businesses to obtain a business license, which would generate tax certificate revenue that would positively affect the City's General Fund.

Options:

1. Introduce for second reading, by title only, draft Ordinance No. XXXX N.S., amending Sections 21.33.020 and 21.33.040 of the Zoning Ordinance/Municipal Code to authorize the issuance of a one-year Temporary Use Permit (TUP) for medical cannabis delivery services in the City of Paso Robles.
2. Recommend additional / alternative amendments to the ordinance.
3. Take no action on the proposed amendment.

Attachments

1. Ordinance No. XXXX N.S.

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 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. 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