

RESOLUTION NO: 15-036
A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING
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 medical 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 medical 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 medical 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; and

WHEREAS, the Planning Commission held a duly notices hearing on December 22, 2015.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RECOMMEND TO THE CITY COUNCIL AS FOLLOWS:

SECTION 1. Recitals. The Planning Commission hereby finds that the above recitals are true and incorporates them into this resolution by this reference.

SECTION 2. Findings. The Planning Commission 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 Planning Commission 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 Planning Commission meeting held on December 22, 2015, of the City of El Paso de Robles by the following roll call vote, to wit:

AYES: Commissioners Donaldson, Rollins, Cooper, and Chairman Vanderlip

NOES: Commissioners Barth and Brennan

ABSTAIN: None

ABSENT: Commissioner Burgett

ATTEST:



Warren Frace, Planning Commission Secretary



Vince Vanderlip, Chairman

EXHIBIT “A”

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 (ten) 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.

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