

City of Atascadero. Draft Ordinance Prohibiting the Establishment and Operation of Medical Marijuana Facilities in the City.

DRAFT ORDINANCE

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING CHAPTER 13 OF TITLE 5, PUBLIC WELFARE, AND REPEALING SUBSECTION (s) OF SECTION 9-3.233, CONDITIONAL USES, OF THE MUNICIPAL CODE, TO PROHIBIT MEDICAL MARIJUANA FACILITIES.

RECITALS

WHEREAS, in 1996 the voters of the State of California passed the “Compassionate Use of Marijuana Law” which allows for the use of marijuana for medical purposes; and

WHEREAS, in 2003, the Legislature approved SB 420, which provided additional statutory guidance for those involved with medical marijuana use, and also authorized cities to enact rules and regulations with regard to medical marijuana consistent with California law; and

WHEREAS, the United States Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, held that the Federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exceptions exist to those prohibitions; and

WHEREAS, the United States Supreme Court held that federal laws which ban the use of marijuana for medical purposes are constitutional in the case of *Gonzales v. Raich* (2005) 545 U.S. 1; and

WHEREAS, the City Council has reviewed and considered the Staff Report prepared by the City Attorney's Office, and supporting documents, regarding the secondary effects of medical marijuana dispensaries, including reports of criminal activity, such as robberies, assaults, burglaries, and the sale of illegal drugs, murder and attempted murder, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare; and

WHEREAS, in some counties, medical marijuana delivery services are currently provided, which is not permitted by either state or federal law; and

WHEREAS, a “qualified patient,” as defined in subsection (f) of section 11362.7 of the California Health & Safety Code, and a “primary caregiver,” as defined in subsection (d) of section 11362.7, is permitted to possess an amount of marijuana consistent with the patient's needs, and state law does not expressly prohibit qualified patients from growing marijuana in an amount consistent with the patient's needs; and

WHEREAS, at its meeting on September 9, 2009, the City Council adopted Ordinance No. 545, which imposed a temporary 45-day moratorium on the establishment and operation of medical marijuana facilities within the City until October 23, 2009; and

WHEREAS, at its meeting of October 27, 2009, the City Council voted to extend the moratorium for 10 months and 15 days and gave direction to staff to submit this draft ordinance to the Planning Commission for review and recommendation; and

WHEREAS, at its meeting of February 16, 2010, the Planning Commission took the following actions regarding this draft ordinance:

- (1) Considered the facts and analysis, as presented in the staff report prepared for this draft ordinance;
- (2) Conducted a public hearing to obtain public testimony on this draft ordinance;
- (3) Found the proposed draft ordinance consistent with the General Plan and recommended that the City Council adopt this draft ordinance; and

WHEREAS, this draft ordinance is categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3).

WHEREAS, this draft ordinance is consistent with the City's General Plan

NOW, THEREFORE, the City Council of the City of Atascadero does hereby ordain as follows:

SECTION 1. Findings.

1. The foregoing recitals are true and correct.
2. At its meeting of October 27, 2009, the City Council referred this draft ordinance to the Planning Commission for review and consideration.
3. At its meeting on February 16, 2010, the Planning Commission reviewed this draft ordinance and adopted Resolution PC 2010-0005 recommending to the City Council that this draft ordinance be adopted by the City.
4. The prohibition of medical marijuana facilities and delivery of medical marijuana in the City is consistent with federal law. The sale, possession, cultivation and distribution of cannabis is prohibited by federal law, specifically 21 U.S.C. sections 812 and 841, part of the Controlled Substances Act, and marijuana continues to be a prohibited Schedule I drug for which there is no legally accepted medical use.
5. The impacts associated with medical marijuana facilities are detrimental to the health, safety and welfare of the citizens such that no area of the City is an acceptable area in which to introduce those types of impacts.

6. This draft ordinance is categorically exempt from environmental review pursuant to the California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3).
7. On March 23, 2010, the City Council conducted a public hearing on this draft ordinance, considered the recommendation from the Planning Commission, and introduced this draft ordinance.

SECTION 2. Repeal of Chapter 13 of Title 5 and Section 9-233 (s). Chapter 13 of Title 5 entitled Medical Marijuana Dispensaries and subsection (s) of Section 9-233 are hereby repealed.

SECTION 3. Amendment to Chapter 13, Title 5. Chapter 13 of Title 5 shall be entitled Medical Marijuana Facilities and shall read as follows:

“Chapter 13
MEDICAL MARIJUANA FACILITIES

Sections:

- 5-13.101 Definition.
- 5-13.102 Purpose and intent.
- 5.13.103 Prohibited within the City of Atascadero
- 5.13.104 Violation - Separate Offense
- 5.13.105 Penalties
- 5.13.106 Civil Injunction

5-13.101 Definition.

- (a) A medical marijuana dispensary, cooperative or collective (hereafter “Medical Marijuana Facility”) means any facility or location, whether fixed or mobile, where medical marijuana is made available to and/or distributed by or to one or more of the following: a “primary caregiver,” “a qualified patient,” or a person with an “identification card,” as these terms are defined in California Health and Safety Code section 11362.5 and following.
- (b) A Medical Marijuana Facility does not include the following facilities (“facilities”), or delivery of medical marijuana to such facilities, as long as such facilities are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 and following.

5-13.102 Purpose and intent.

The purpose and intent of this Chapter is to prohibit any Medical Marijuana Facility, as defined above, within the City limits. 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 a Medical Marijuana Facility, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare.

5.13.103 Prohibited within the City of Atascadero

The establishment or operation of a Medical Marijuana Facility as defined in this Chapter is prohibited within the City limits. In addition, delivery of medical marijuana to any person, ~~is prohibited within the City limits~~ except as provided in Section 5-13.101 and except for deliveries by a primary caregiver to a qualified patient, ~~is prohibited within the City limits.~~

5.13.104 Violation - Separate Offense

Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

5.13.105 Penalties

Violation of any provision of this Chapter is a misdemeanor unless the city attorney authorizes issuance of an infraction citation or files a complaint charging the offense as an infraction or the court upon the prosecutorial recommendation of the city attorney determines that the offense is an infraction.”

5.13.106 Civil Injunction

The violation of section 5.13.103 shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

SECTION 4. This Ordinance is consistent with protection of the public interest, health, safety, convenience, and welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to the California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3).

SECTION 5. Publication. The City Clerk shall cause this ordinance 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 Section 65090 of the Government Code.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

Introduced at a regular meeting of the City Council held on March 23, 2010, and passed and adopted by the City Council of the City of Atascadero on the ___ day of _____, 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CITY OF ATASCADERO

Roberta Fonzi, Mayor

ATTEST:

Marcia McClure Torgerson, C.M.C., City Clerk

APPROVED AS TO FORM:

Brian A. Pierik, City Attorney