

REPORT TO THE PLANNING COMMISSION



DATE: July 17, 2014

TITLE: Location of Medical Marijuana Dispensaries and Cultivation Sites

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RECOMMENDATION

That the Planning Commission recommend to the City Council where Medical Marijuana Dispensaries and/or Cultivation Sites should be permitted in the City.

BACKGROUND

The possession, cultivation, transportation, and distribution of marijuana are governed by a number of laws: the federal Controlled Substances Act (21 USC §801 *et seq.*); the Compassionate Use Act (Health & Safety Code §11362.5), which was approved by California voters as Proposition 215 in 1996; the Medical Marijuana Program Act (Health & Safety Code §11362.7 *et seq.*), which was adopted by the State Legislature in 2003; and other provisions of the California Uniform Controlled Substances Act (Health & Safety Code §11000 *et seq.*).

It should be noted that the Compassionate Use Act and Medical Marijuana Program Act do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses. Nor does the Compassionate Use Act or Medical Marijuana Program Act preempt or limit local regulation of medical marijuana uses through local land use authority, which was the holding in the recent California Supreme Court "unanimous" opinion in the case known as *City of Riverside v Inland Empire Patient's Health & Wellness Ctr.* (May 6, 2013)

In summary, under the current state of the law, cities may regulate where medical marijuana dispensaries and cultivation may be permitted (via zoning) within their jurisdictional boundaries.

Pursuant to Section 2.32.020 "Powers and duties" of the Desert Hot Springs Municipal Code, the Planning Commission has the powers and duties set forth in the City's zoning ordinance (Title 17), in addition to any other authority prescribed by state and local laws or regulations. In Title 17, under Section 17.04.040 "Review authorities," the Planning Commission is vested with the authority to make recommendations to the City Council on proposed General Plan Amendments and Zoning Ordinance Amendments, which are the decisions that may need to be made to formally permit the operation of medical marijuana dispensaries and related cultivation in certain land use zones within the City.

According to the 2008 Attorney General Guidelines, medical marijuana may only be cultivated and distributed within in the context of a collective or cooperative, which are essentially non-profit organizations in which all persons who cultivate, distribute, sell and consume medical marijuana must be members of. In other words, it must be closed circuit which means outside participation at any stage in the process from cultivation to consumption cannot involve any non-member of the collective or cooperative. Basically, there cannot be any outside investors involved. There are also no provisions in the law that permit the City or the typical retail pharmacy to cultivate medical marijuana or to operate a medical marijuana dispensary -- yet.

Possible Zones-Commercial Districts

Possible zones for medical marijuana dispensaries and related cultivation could include Commercial Districts.

In Desert Hot Springs, Commercial Districts are broken down into three categories: (1) C-N which is Neighborhood Commercial; (2) C-G which is General Commercial; and (3) C-C which is Community Commercial.

The C-N (Neighborhood Commercial) District is intended for neighborhood scale shopping centers conveniently located near residential areas. These developments are typically anchored by supermarkets and super drugstores. A wide range of other uses, including banking, barbers/beauty salons, dry cleaners, restaurants and other related activities are typically found in these planned centers. Typical sizes are 8 to 10 acres providing approximately 80,000 to 100,000 square feet of gross leasable floor area.

The C-G (General Commercial) District include a wide variety of smaller commercial centers at nodes with development such as small scale convenience commercial centers that provide a limited range of convenience commercial services, smaller grocery and convenience stores, service stations, and other limited retail operations; and also along major commercial corridors, with shops including specialty retail shops, a broad range of clothing and apparel, jewelry stores and a variety of personal service businesses. Smaller, moderately priced department stores may also be appropriate under this designation. Development may range from freestanding retail buildings and restaurants, to planned commercial centers. Typical sizes range between 1 to 8 acres with gross leasable square footage varying with uses. Hotels and motels may also be appropriate on these lands.

The C-C (Community Commercial) District provides for larger, community scale shopping centers and malls, which may be anchored by several department stores, a variety of retail outlets, and restaurant and entertainment uses. Hotels and motels may also be appropriate on these lands. Typical sizes range between 100,000 to 200,000 square feet or more of gross leasable floor area. This type of development requires approval of a specific plan. While smaller than regional facilities, the community commercial center will serve the entire community, as well as the surrounding market area.

Other Zoning Considerations

The Planning Commission could also consider establishing an "Overlay District," which could be overlaid over any zoning district in the City such as, but not limited, to commercial or industrial districts. This could be an alternative if the Planning Commission has any particular concerns with the operation of medical marijuana dispensaries within any given zoning district in the City. Such an overlay district could be used to impose certain standard regulations on dispensaries and/or related cultivation activities with the intent of mitigating or eliminating any potential secondary effects such uses generally may have on surrounding uses.

In addition, the Planning Commission could consider requiring that all medical marijuana dispensaries and related cultivation activities be subject to the issuance of a conditional use permit (in any approved zoning district) which would allow the Planning Commission (on a case-

by-case basis) to impose particular conditions of approval on such uses which are crafted to mitigate any specific potential secondary negative impacts the particular proposed dispensary may have on surrounding uses, such as traffic, odor, etc. based on the existing circumstances at the time the application is being processed and considered by the Planning Commission.