

REPORT TO THE PLANNING COMMISSION



DATE: January 31, 2017

TITLE: Amendment of a Conditional Use Permit (CUP 04-14) to allow for limited cultivation of up to 99 mature plants in the 1,315 square foot basement below an existing medical marijuana dispensary located in an existing 6,200 square foot retail commercial center at 12285 Palm Drive, Suite B (102) at the southwest corner of Palm Drive and Buena Vista Avenue in the C-G (Commercial General) zone. Request submitted by Thom Miller on behalf of Greenleaf Wellness.

Prepared by: Scott Taschner, Associate Planner
Reviewed by: Charles Rangel, Interim Community Development Director

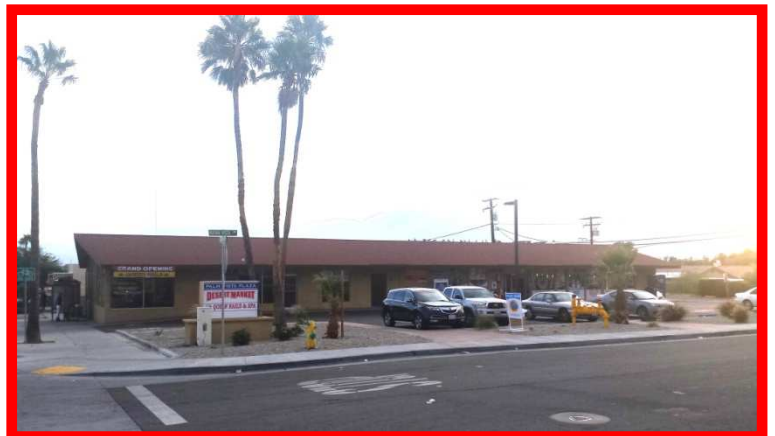
RECOMMENDATION

1. Staff Report;
2. Questions of Staff from Planning Commission;
3. Invite Applicant to Speak;
4. Questions for the Applicant
5. Open the Public Hearing;
6. Take Public Testimony;
7. Close the Public Hearing;
8. Opportunity for Applicant Rebuttal;
9. Planning Commission discussion and questions of Staff; and
10. Approval of a Conditional Use Permit No. 04-14 to operate a medical marijuana dispensary with limited cultivation located in an existing retail commercial center at 12285 Palm Drive, Suite B at the southwest corner of Palm Drive and Buena Vista Avenue.

BACKGROUND

Previous Actions:

On **December 21, 2015** the Planning Commission approved a Conditional Use Permit (CUP 04-14), to allow a medical marijuana dispensary to operate in an existing tenant space within an existing multi-tenant retail center located at the southwest corner of Palm Drive and Buena Vista Avenue (12285 Palm Drive, Suite B).



And on **January 10th, 2017** the Planning Commission voted to continue the current request (amendment to the CUP to allow for limited cultivation of medical marijuana, in the basement only, of up to 99 mature flowering plants) to the January 31st, 2017 meeting in order to provide the applicant an opportunity to attend the hearing and answer questions of the commission.

Project Background:

The project site is an existing 6,200 square foot multi-tenant retail shopping center located on a 0.56 acre irregularly-shaped parcel. The proposal is to allow for limited cultivation of mature medical marijuana plants in the 1315 square foot basement of the existing (upstairs) dispensary, which is approximately 2,000 square feet.

GENERAL PLAN AND ZONING CONSISTENCY

The building site is located within the C-G (General Commercial) land use designation of the City General Plan and Zoning map. Medical Marijuana Dispensaries with ancillary limited cultivation are conditionally permitted within this land use designation. A portion of the parking area is located on a separate lot designated R-H (Residential – High Density); however, staff has determined that no zoning issues are raised by the proposed request as it relates to the parking area and the R-H zone.

The Zoning and General Plan Land Use designations, and the current land uses for surrounding properties are as follows:

<u>Zoning & General Plan Designations</u>	
North, East & Southeast =	C-G – General Commercial
West and Southwest =	R-H – Residential High Density

<u>Current Land Use</u>
Various Retail Commercial Businesses
Residential – Single Family

SITE DESCRIPTION

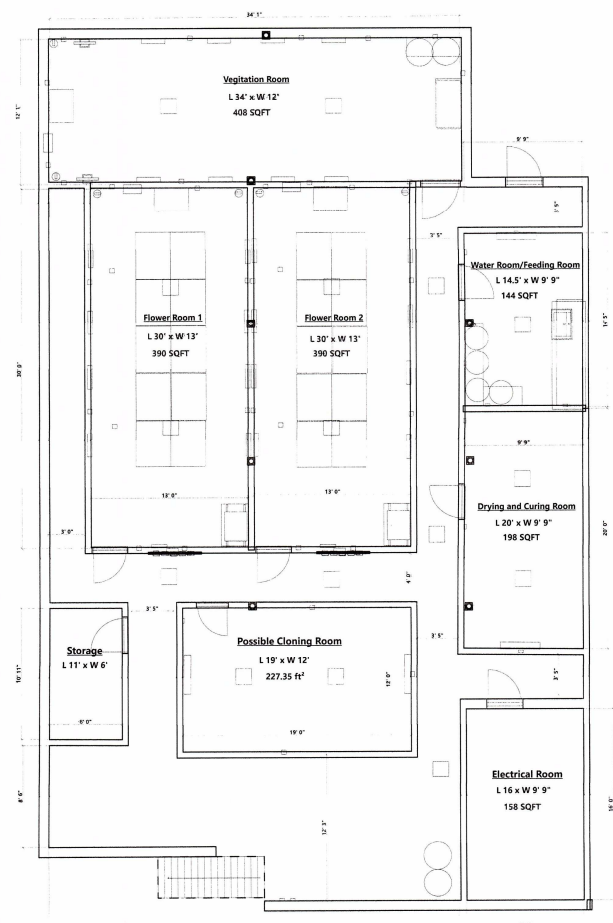
The existing multi-tenant retail center is comprised of 6,200 square feet of tenant spaces. The proposed location is in the approximate middle of the building, between the nail salon nearest Palm Drive and the convenience market toward the back. The center provides 24 parking spaces for all tenants. Two other tenants are located in the center at this time:

1. Queen Nail Spa
2. Desert Market

The main vehicular access is on Palm Drive with secondary access on Buena Vista Avenue. Both driveways connect to a common interior drive aisle fronting the building, with access to additional parking and the trash enclosure on the abutting R-H-zoned parcel.

PROJECT ANALYSIS

The Applicants is requesting an amendment to his existing Conditional use Permit to allow for limited cultivation of mature medical



marijuana plants in the 1315 square foot basement (only) below the existing (upstairs) dispensary, which is approximately 2016 square feet. The applicant is requesting some minor interior improvements, but they are completely contained within the basement area. The applicant will have to submit tenant improvement plans for building and fire department review. The police department has been routed the current request for an amendment to the CUP and has no additional comments or conditions from the previously approved conditions associated with CUP 04-14.

Zoning Conformance

No changes to the building's overall size or form are proposed and no development standards are affected by the request.

Site Circulation/Off-Street Parking

Existing ingress and egress to the site is provided by two (2) driveways, one each on Palm Drive and Buena Vista Avenue. Staff has concluded that the site design and proposed circulation pattern is consistent with the proposed use.

Parking Calculation		
Use	Ratio	Number of Required Spaces
2,016 sq. ft. of retail space	3 spaces/ 1,000 square feet	7
1,315 sq ft of cultivation area	1 space per 2,500 square feet	1
Parking Provided		24

The commercial retail center provides 24 spaces for use by all tenants and their customers. No specific number of spaces is allocated or reserved for individual tenants. With the additional use in the basement the entire center requires 20 vehicle spaces (6,200 square feet x 3 spaces / 1000 square feet, plus one space for the proposed cultivation area) and therefore has more than the minimum required parking for retail activities.

Transit Service

Sunline Route #14 is the nearest transit route and makes several stops along Palm Drive near the site. For most transit planning, it is expected that the majority of people are willing to walk up to one-third mile to access transit. Consequently, the site is considered to be transit-accessible for most people.

Elevations, Colors and Materials

The existing center's architecture is a simple modern building with red tile roof. Closed circuit cameras and security lighting are mounted on the building exteriors.

Landscaping

Existing landscaping in the center is a mix of drought-tolerant and desert-friendly plant materials located at the corner fronting the street intersection, along Buena Vista Avenue and at the rear (easterly) edge of the site. No changes are proposed.

Lighting Plan

The site is fully developed, and the lighting plan submitted with the application shows three 16-foot high pole lights for the parking lot. No changes to the lighting plan for the site are proposed.

Phasing Plan

No phasing is proposed.

Zoning Consistency Finding

Following review and analysis of the application materials and plans, staff has determined that the proposed project conforms to the development standards of C-G (General Commercial) Zoning District.

OPERATIONAL ISSUES

Staff has reviewed and summarized a number of operational issues below. All aspects of the operation will be subject to the original conditions of approval from CUP 04-14, the conditions of approval of this amendment to the CUP as well as the associated Regulatory Permit.

Security

Security cameras with 24 hour live feed have been provided in accordance with specifications and requirements of the City. The major areas covered by cameras are the entry areas, registration desk, main entrance, store rooms, employee break room and sales room.

Staff is recommending that the applicant install additional security measures in the form of additional locks and security cameras on the basement door and the door at the top of the stairs (both leading to the exterior of the building). Materials specifying the proposed locks and cameras have been provided in your packets.

The applicant has employed a security guard on site during all hours of operation and the security guard(s) are subject to all clearance procedures applicable to the operation's employees. Subject to the conditions of approval the security guard shall not be allowed to be involved in any of the other operations of the business. The security guard will be tasked with employing security measures only.

Odor Control

No odor control system has been identified by the applicant. Staff recommends that an odor control system be required, with specifications subject to staff approval.

Outdoor Sales

No outdoor sales are proposed or permitted by the ordinance.

Age Restrictions

Only patients conforming to California law will be served, including only those possessing a medical recommendation and valid California ID indicating an age of no less than 18 years. Verification of the medical recommendation and identity will be undertaken prior to any other service or sale. All records of both approved and rejected customers will be stored and available for review by the City.

Hours of Operations

The applicant has not specified the proposed hours of operation. The City's ordinance presently allows operations from 8:00am to 10:00pm.

CONDITIONAL USE PERMIT FINDINGS

Conditional Use Permits are regulated under Section 17.76 of the Desert Hot Springs Municipal Code and require that certain findings be made by the Planning Commission before granting a CUP request. Staff has developed recommendations for each finding, as follows:

1. *That the proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Zoning Ordinance.*

The application is for an amendment to the previously approved Conditional Use Permit (CUP 04-14) to allow for limited cultivation of medical marijuana (up to 99 mature flowering plants) in the basement of the existing medical marijuana dispensary. Medical marijuana dispensaries are identified in Section 17.180.060 of the City of Desert Hot Springs Zoning Ordinance as a permitted use within any commercial zone which includes the C-G / General Commercial zone), subject to approval of a Conditional Use Permit and state law allows the cultivation of up to 99 plants. The amendment will be subject to all previous conditions of approval associated with CUP 04-14, the conditions and regulations of the regulatory permit, and the conditions imposed by this amendment to assure the proposed use will comply with applicable Zoning Ordinance provisions. Staff recommends this finding.

2. *That the proposed use would not impair the integrity and character of the land use district in which it is to be located.*

Section 17.12.010.B.2 of the Desert Hot Springs Zoning Ordinance identifies the underlying C-G (General Commercial) zoning district to, “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.” The proposed medical marijuana dispensary and associated limited cultivation (of up to 99 mature flowering plants) qualifies as both a “limited retail operation” and a “personal service business”, and will occupy a tenant space similar to other tenant spaces in the area. The operation will serve customers in a manner similar to other retail operations and will not introduce any activities that would impair the integrity or character of the land use district in which it is to be located. Staff recommends this finding.

3. *That the subject site is physically suitable for the type and intensity of land use being proposed.*

The site is developed as a multi-tenant retail commercial center with parking, landscape and other features and amenities appropriate to the development. The existing medical marijuana dispensary and proposed limited cultivation is physically organized similar to other retail establishments and the retail center has adequate parking, loading and pedestrian circulation for the proposed use. Consequently, the site is physically suitable for the type and intensity of the dispensary and proposed limited basement cultivation (of up to 99 mature flowering plants). Staff recommends this finding.

4. *That the proposed use is compatible with the land uses presently on the subject property.*

The existing medical marijuana dispensary and proposed limited basement cultivation (of up to 99 mature flowering plants) is a retail use with ancillary cultivation and processing activities, and can be considered similar to other retail establishments allowed in the C-G (General Commercial) zone, such as personal services (e.g., dry cleaners), grocery stores, food products or nurseries with on-site plant sales. The existing retail commercial center was developed to accommodate a wide variety of retail commercial uses, and is now presently occupied by a nail salon

(Queen Nails) and a convenience grocery store (Desert Market). The proposed dispensary with limited cultivation does not appear to be outside the range of activities typical for a retail center and appears compatible with the present adjacent tenant and with other typical retail tenants that might be anticipated in the future. Staff recommends this finding.

5. *That the proposed use would be compatible with existing and future land uses within the general area in which the proposed use is to be located.*

Existing and future land uses within the general area of the proposed medical marijuana dispensary are commercial retail and residential land uses. Lands to the west and southwest are developed with single family residential, while lands to the north, east and southeast are developed or zoned for retail commercial businesses. The proposed site is a self-contained development with all vehicle and pedestrian circulation needs accommodated on site. The subject tenant space is located in the center of the existing building and the proposed use is not directly accessed from surrounding residential land uses. The only exterior modifications to the building being proposed are additional security features (cameras and door locks). NO additional signage is proposed. All activities will be contained within the existing building and the operation will appear as a retail use consistent with the intent of the multi-tenant retail commercial center. Consequently, the proposed limited cultivation in the basement (of up to 99 mature flowering plants) is expected to be compatible with existing and future commercial and residential development in the surrounding general area. Staff recommends this finding.

6. *That the proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses.*

The existing medical marijuana dispensary and proposed limited basement cultivation (of up to 99 mature flowering plants) will be located within an existing multi-tenant retail commercial center. The center is composed of one single-story building surrounded with parking and landscaping. This current proposal will not affect the building footprint in that no new expansion of square footage is proposed. Adjacent land uses are either existing single family residential (the zone allows up to 14 dwelling units per acre). Residential uses are currently prohibited by the Municipal Code to exceed three stories or 35 feet in height. The subject 6.6 acre site is developed with one single-story building that does not exceed 35 feet in height. The scale, mass, coverage, density and intensity of the proposed use will be consistent with general commercial activities and its location within an existing retail commercial center on a primary street intersection will cause it to be compatible in scale, mass, coverage, density, and intensity with adjacent commercial and residential uses. Staff recommends this finding.

7. *That there are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.*

The subject site is fully developed as a retail commercial center with all public services and utilities installed and available. The proposed use of the basement for limited cultivation - not to exceed 99 plants - will not create an extraordinary demand for water, sanitation or other public utilities and services that would result in any detriment to public health and safety. Staff recommends this finding.

8. *That there will be adequate provisions for public access to serve the site.*

The subject site is fully developed with vehicular and pedestrian access, both from public rights-of-way as well as within and throughout the site. The medical marijuana dispensary and proposed limited basement cultivation (of up to 99 mature flowering plants) will not create any additional demand for access than provided by the existing retail commercial center. Staff recommends this finding.

9. *That there will not be an adverse effect upon desirable neighborhood characteristics.*

Desirable neighborhood characteristics include the single family residential neighborhoods to the west and southwest, long-range views from existing homes and business of surrounding mountains, and the future availability of local goods and services in the largely vacant retail commercial center. While the existing medical marijuana dispensary and limited basement cultivation operation occupies one of the tenant spaces (in the center of the building), the surrounding retail commercial neighborhood has substantial additional available square footage for other businesses. The proposal's location within the center will not adversely affect the residential neighborhoods nor impede long-range views. Staff recommends this finding.

10. *That the proposed use is necessary and essential to the community.*

The proposed limited basement cultivation (of up to 99 mature flowering plants) beneath the existing and previously approved dispensary can be considered necessary and essential to the community to the extent that it is supported by customers that cause it to succeed as a local retail business. Further, the proposed use must also operate under City regulations and conditions of approval so that only the necessary and essential elements of the business – as determined by the City – are expressed over the life of the business. Section 11362.5 of the California Health and Safety Code was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana. Staff recommends this finding.

11. *That the proposed use is consistent with applicable goals and policies of the General Plan.*

Staff has identified the following General Plan goals and policies applicable to the application and provides responses to each.

Administration

Goal: Comprehensive and integrated administration and implementation of all elements of the Desert Hot Springs General Plan through consistent and effective policies and programs.

The City has adopted a zoning ordinance to implement the General Plan and provide for review and approval of individual development projects. The proposed limited cultivation of medical marijuana will be subject to all requirements of this Conditional Use Permit, as prescribed by the Zoning ordinance and the adopted conditions of approval.

Policy 7: The City shall encourage in-fill development within already urbanized areas of the corporate boundaries of the City, and expansion of new development shall be logically phased and, as appropriate, guided by the development of existing and new Specific Plans.

The proposed limited cultivation of medical marijuana will be located within an existing retail commercial center in the C-G (General Commercial) zone of the City and all public improvements are in place. No specific plan has been adopted for the subject property.

Policy 8: City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of property located at least within 300 feet of development proposal sites.

Prior to Planning Commission review of the project application, notice of the public hearing for the proposed amendment to Conditional Use Permit (CUP 04-14) was provided to property owners within 300 feet of the proposed site. In addition, an Advertisement was run in the Desert Sun newspaper on December 24, 2016 and all materials associated with the amendment have been available for review in the Planning Department. The notice was sent for the January 10th, 2017 Planning Commission hearing. At that hearing the commission opened the public hearing to receive public comments/testimony; however no comments were received or entered into the record. Once the public had the opportunity to speak and the applicant was not present to provide details of the project, the commission closed the public hearing. Based on the fact that the applicant was not present the Planning Commission made a motion and voted unanimously to continue the item to a date certain of January 31st, 2017 to allow the applicant an opportunity to present more details about the proposal and answer some of the commission's questions. The item is set for the January 31st, 2017 planning commission hearing date.

Commercial Land Use

Goal: A responsive range of commercial land uses conveniently and appropriately distributed throughout the City, meeting the community's needs and taking full advantage of emerging development and economic opportunities.

The proposed limited cultivation of medical marijuana will be sited within an existing retail commercial facility located at an intersection of a Major Collector (Palm Drive) and a Local Collector (Buena Vista Avenue). This site is a convenient location for retail commercial uses generally. The proposed use will provide medical marijuana to qualified customers, which is an emerging economic opportunity.

Community Design

Goal 2: Variety of community design, architecture and landscaping compatible with the City's desert setting and surrounding development.

The project is located within an existing retail commercial center and no changes to the exterior are proposed.

Policy 1: Private and public sector development projects shall equally apply City community design standards, thereby protecting the community's scenic viewsheds, providing community cohesion and enhancing the image of Desert Hot Springs as a resort residential community.

The site is an existing retail commercial center and no expansion of the building's overall footprint is proposed. The amendment to allow for operation of limited cultivation in the basement will not affect the scenic viewsheds.

Policy 9: Signs shall be limited to the minimum size, scale and number needed to provide functional identification and exposure necessary to convey messages, while minimizing impacts on traffic safety, streetscape and scenic viewsheds.

No additional signage is proposed under this amendment.

Policy 10: Lighting shall be limited to the minimum height, number and intensity of fixtures needed to provide security and identification in residential, commercial and industrial development, taking every reasonable measure to preserve the community's night skies.

No additional (exterior) lighting is proposed as a part of this amendment. Any changes to exterior lighting will require additional review by City staff, and would be required to comply with Section 17.40.170 (Outdoor Lighting) to assure that only the minimum level of lighting necessary to provide the needed security is installed

Economic Development:

Goal 1: A broadly based, healthy and balanced economy that provides a full range of economic and employment opportunities.

The proposed limited cultivation of medical marijuana will be ancillary to the main use of the dispensary and will provide for additional employment in the installation of necessary equipment in the basement and will provide its customers with, potentially, more affordable options for their medical needs.

Goal 2: Continued growth, which assures the maintenance of a revenue base adequate to support present and future public services and facilities needs.

The establishment of limited cultivation of medical marijuana will provide additional revenues to the City to support present and future public needs.

Policy 11: Make every effort to expedite the processing of development proposals, which address the economic development goals of the community and take the initiative to incubate new programs and projects.

The application for an amendment to the Conditional Use Permit is required by the Desert Hot Springs zoning code to assure compatibility with surrounding land uses and to develop project-specific conditions to assure successful operation in concert with the City's development goals. The application was received in November 2016 and on January 10, 2017 the Planning Commission heard and deliberated on the purposed amendment. The applicant was not in attendance at that meeting so the Planning Commission made a motion and voted unanimously to continue the item to a date certain of January 31st, 2017. Subsequently, the application has been processed expeditiously.

Hazardous and Toxic Materials

Goal: The assured safety of City of Desert Hot Springs residents and visitors through the regulation of the manufacture, transport, use and disposal of toxic and hazardous materials.

Any hazardous or toxic materials associated with the proposed operation shall be regulated by the provisions of all applicable law, including the Desert Hot Springs Municipal Code, including Section 5.50 (Medical Marijuana Facilities Regulatory Permit), Section 17.40 (Property Development Standards) and Section 17.180 (Medical Marijuana Facilities Location).

Fire and Police Protection

Goal: A high level of police and fire protection and service.

The existing and previously approved dispensary includes security measures, including door locking systems, exterior lighting, camera monitoring and other systems to minimize the impact on police protections services. Fire suppression systems have been incorporated into the operation to minimize the impact on fire protection service. The applicant is proposing additional security measures for the cultivation area by installing additional door locks, security/alarm control pads, and security cameras at the door in the basement and at the top of the stairs. The addition of limited cultivation activities in the basement are not expected to create a demand for a high level of police and fire protection services. The client has

Policy 1: All new and improved developments shall be reviewed for their impact on safety and the provision of police and fire protection services.

The proposed application and associated regulatory permit will include requirements for review of the proposed operation by City police and fire services. Any identified impacts on safety will be addressed by conditions of approval or regulatory requirements.

Policy 2

Enforce fire standards and regulations in the course of reviewing building plans and conducting building inspections.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

Staff recommends this finding.

12. That there will not be significant harmful effects upon environmental quality and natural resources.

The proposed limited cultivation of medical marijuana will be sited in the basement of the single tenant space which is located within an existing, multi-tenant retail commercial center and operated in accordance with the City's regulations and conditions of approval. Consequently, no significant adverse or harmful effects on the environment or on any natural resources are anticipated. Staff recommends this finding.

- 13. That the negative impacts of the proposed use are mitigated and/or a mitigated negative declaration may be filed.*

The proposed limited cultivation of medical marijuana will be operated below the existing retail commercial use within an existing retail commercial center. It will be operated in accordance with all applicable regulations and conditions of approval. A review of the proposed project has identified no negative impacts; consequently, no mitigation measures are required.

- 14. That the proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.*

The proposed limited cultivation of medical marijuana has been reviewed by City departments and other public agencies for any potential detrimental effects on public interests, health, safety, convenience or welfare of the City. Any potential concerns have been addressed by recommended conditions of approval, and no unresolved concerns remain. Staff recommends this finding.

In reviewing this application, plans, documents and other supporting information, staff has determined that the Planning Commission can make these findings and has added additional findings specific to the project.

ENVIRONMENTAL ANALYSIS

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*, and the CEQA Guidelines, Title 14, Chapter 3 of California Code of Regulations, the project is found to be Categorically Exempt from further environmental review as a Class 1 (Existing Facility) Categorical Exemption of Section 15301 of CEQA.

FISCAL IMPACT

Improvements to the existing building will generate one-time revenues to the City in the form of building permit fees to defray plan check and inspection costs. In addition, the City will receive on-going revenue from marijuana taxes and the limited cultivation operations will provide some tax revenues (at \$25 / sq. ft).

RECOMMENDATION

Staff finds that the proposed project is substantially consistent with the General Plan and meets the development standards of the C-G (General Commercial) zoning district. Staff recommends that the Planning Commission approve the amendment to Conditional Use Permit No. 04-14, allowing for limited cultivation of up to 99 mature flowering plants in the basement of the Greenleaf wellness Dispensary located at 12285 Palm Drive, subject to the attached Conditions of Approval.

EXHIBIT(S)

1. Recommended Conditions of Approval
2. Site Plan
3. Existing Basement Floor Plan
4. Proposed Basement Floor Plan
5. Letter. of Explanation
6. Mini Business Plan
7. Camera Spec Sheet
8. Lock Spec Sheet
9. Alarm Spec Sheet

