



Legislation Text

File #: 20-127, **Version:** 1

TO: Mayor Bien-Willner and Town Council

FROM: Andrew Miller, Town Attorney

DATE: March 12, 2020

CONTACT:

AGENDA TITLE:

Consideration of Ordinance 2019-07; Amending Article XI, Section 1102.2.B. of the Zoning Ordinance; Medical Marijuana Dispensary Regulations

RECOMMENDATION:

Continue the Public Hearing on Ordinance 2019-07 to May 28, 2020.

BACKGROUND:

Many of the municipalities near Paradise Valley have adopted specific spacing standards between medical marijuana dispensaries and residential properties. The current Town Zoning Ordinance provisions do not have specific spacing requirements but instead suggest that spacing should be a "primary concern" and that the spacing distance between medical marijuana dispensaries and residential properties should be "optimized."

The Council should evaluate whether the Town should implement specific mandatory spacing requirements by making changes to Section 11102.2.B. of the Zoning Ordinance. The current Zoning Ordinance provision regarding spacing requirements is contained in Article XI, Section 11102.2.B.2.f.iv (11), which states:

(11) A medical marijuana dispensary shall be at least 1,500 feet from the following existing uses, as measured within the Paradise Valley municipal limits only: (a) educational institutions (b) places of worship (c) parks and recreational facilities (d) youth centers; and at least 5,280 feet from any other medical marijuana dispensary, as measured within the Paradise Valley municipal limits only. Measurements are taken from nearest property lines of the medical office use and each of the uses noted above. The location of the dispensary shall optimize distance from residentially zoned property. Residential spacing shall be the primary consideration for all reviews of intermediate SUP amendment applications for medical marijuana dispensaries.

By comparison, the spacing standards between medical marijuana dispensaries and residential properties contained in the zoning standards for other municipalities in the east valley are as follows:

Specific Residential Spacing/Location Requirements for Medical Marijuana Dispensaries

	Residential Zoning District	Child Care Facility	Church/Place of Worship	Other Medical Marijuana Dispensaries
Town of Paradise Valley	None	1.500 Feet	1.500 Feet	5.280 Feet
City of Tempe	1.320 Feet	1.500 Feet	1.320 Feet	5.280 Feet
City of Scottsdale	1.500 Feet	1.500 Feet	1.500 Feet	2.640 Feet
Town of Gilbert	1.000 Feet	1.000 Feet	1.000 Feet	5.280 Feet
City of Chandler	1.320 Feet	1.320 Feet	1.320 Feet	5.280 Feet
City of Mesa	2.400 Feet	500 Feet	1.200 Feet	5.280 Feet

*Caregiver Cultivation

The Planning Commission reviewed this information and recommended that the Council adopt a spacing standard of 1,500 feet between residential properties and medical marijuana dispensaries (see draft Ordinance No. 2019-07, copy attached). Although the Planning Commission did not receive any public comment when it discussed the spacing standards at its Work Study session on May 7, 2019 and Citizen Review Meeting on May 21, 2019, the Commission did receive comments on draft Ordinance No. 2019-07 at its public hearing on June 4, 2019 from a lawyer at a law firm that represents medical marijuana dispensary owners. The lawyer who commented on the Ordinance suggested that because Paradise Valley is predominately residential in character the net result of the 1,500 foot spacing standard would result in no viable medical marijuana dispensary locations in the Town. The lawyer also suggested that because of the lack of viable locations the Ordinance would not comply with the requirements of the Medical Marijuana Act. By unanimous vote, the Planning Commission recommended adoption of the Draft Ordinance.

The Town Council then scheduled the Ordinance for study session discussion and a public hearing on June 13, 2019. Prior to the Town Council hearing on the Draft Ordinance the Town received another letter from the law firm that represents medical marijuana dispensary owners contending that the Draft Ordinance was “illegal” under the terms of the Arizona Medical Marijuana Act. Based on such a contention the Council continued the public hearing on the Draft Ordinance to December 5, 2019 so that research could be conducted on the claim that the Draft Ordinance would be illegal. At this time the Town Attorney’s Office is conducting some additional research regarding the claim of illegality, but such work is still ongoing. Based on the need for additional legal research it is recommended that the public hearing on the Draft Ordinance be continued until May 28, 2020.

NEXT STEPS

It is recommended that the Council continue the public hearing to the Council meeting of May 28, 2020 to permit additional research on the proposed changes to the spacing standards for medical marijuana dispensaries.

ATTACHMENTS:

Draft Ordinance No. 2019-07
PowerPoint