



Legislation Text

File #: 20-409, Version: 1

TO: Mayor Bien-Willner and Town Council

FROM: Jill Keimach, Town Manager
Andrew Miller, Town Attorney

DATE: October 22, 2020

CONTACT:

AGENDA TITLE:

Adoption of Ordinance No. 2019-07; Revisions to the Zoning Ordinance Relating to Medical Marijuana Dispensaries

RECOMMENDATION:

Adopt Ordinance No. 2019-07

BACKGROUND:

On May 28, 2020 the Town Council held a public hearing on Draft Ordinance No. 2019-07 and then continued the public hearing to October 22, 2020. Since the time of that continuance, the Town staff has received legal advice from outside counsel regarding some changes and improvements in the draft ordinance that would improve the draft ordinance by creating a 2-step approach for processing applications for Medical Marijuana Dispensaries (MMDs). The Council reviewed the draft ordinance at its October 8, 2020 Study Session and had no suggested changes to the draft ordinance. Staff recommends that the Council approve Ordinance No. 2019-07 and implement a 2-step process for MMD rezoning applications.

First Step:

Step one requires that as a precondition of filing an application for a MMD an applicant must first determine whether there are any existing operating medical marijuana dispensaries (each an "Available Facility") located within 10 miles of the approximate center of the Town of Paradise Valley (at approximately the intersection of E Mockingbird Lane and N Mummy Mountain Road); and if so, then the application shall be refused. Such refusal is based on the fact that the Arizona Department of Health Services (AZDHS) rules for the distribution of medical marijuana dispensaries focuses on locating the dispensaries within 10 miles of an area where there is a high concentration of medical marijuana cardholders. There are currently numerous Available Facilities within a short distance and drive time from Paradise Valley, thus there is no need for locating a MMD within the Town itself. If an Available Facility is within a 10-mile radius of the "center" of the Town at the time an applicant desires to file an application, then such MMD is not necessary and does not fulfill the mandate of the Medical Marijuana Act based on the AZDHS spacing and dispensary location rules. Thus, the Town can reasonably refuse to accept an application if the step 1 analysis shows that there are Available Facilities in existence that already meet the needs of medical marijuana cardholders. Further, if the

Town has reason to believe that there is an Available Facility at the time an application is submitted (and the applicant overlooked such an Available Facility), then the Town can select a consultant (paid for by the applicant) to determine whether there are any Available Facilities, and if so, then such a finding shall be grounds for refusal to accept the application for a MMD.

Second Step:

Because a 1500' spacing between a MMD and any residential property (as initially recommended by a prior Town Manager and the Planning Commission) would likely leave no possible MMD sites in PV at the current time, such an ordinance change might lead to a SB1487 complaint or a legal challenge to the reasonableness of the PV Zoning Ordinance. Thus, outside counsel has recommended an alternative approach to spacing MMDs from residential properties.

Section 1102.2.B.2.f .iii.(11) has been modified to provide that the spacing between an MMD and any residential use district or any resort or residential use within a resort SUP district must be at least 300 feet. The same section has been modified to require that:

“All distances shall be measured from the wall of the office suite or space occupied by the medical marijuana dispensary nearest to the nearest property line of the district(s) or use(s) indicated above.”

This change provides for adequate spacing between an MMD site and the nearest residential or resort properties and is not as problematic as measuring from the property lines of a medical office SUP property.

Conclusion

Aside from this 2-step approach to applications for rezonings related to MMDs, the bulk of the Zoning Ordinance requirements remain the same, that is, an application for a MMD shall be an intermediate or major special use permit amendment process (in a Medical Office SUP District) and is subject to all of the previous standards and requirements (now contained in Sections 1102.2.B.2.f .ii and iii. of the Zoning Ordinance).

It is respectfully recommended that the Council adopt Ordinance No. 2019-07.

ATTACHMENTS:

Ordinance 2019-07
PowerPoint Presentation