



COCHISE COUNTY PLANNING DEPARTMENT

Planning, Zoning and Building Safety

1415 Melody Lane, Bisbee, Arizona 85603

(520) 432-9240

Fax 432-9278

Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Cochise County Board of Supervisors
Through: Michael Ortega, County Administrator

FROM: Michael Turisk, Interim Planning Director 
For: Carlos De La Torre, P.E., Community Development Director

SUBJECT: Docket R-11-01 – Proposed Cochise County Zoning Regulation Amendments for Medical Marijuana Cultivation, Medical Marijuana Dispensary Cultivation, Medical Marijuana Dispensaries and Infusion Facilities.

DATE: March 10, 2011 for the March 15, 2011 Meeting

Proposed Cochise County Zoning Regulation Amendments for Medical Marijuana Cultivation, Medical Marijuana Dispensary Cultivation, Medical Marijuana Dispensaries and Infusion Facilities

Docket R-11-01 is a request by Cochise County for zoning text amendments to the County's Zoning Regulations for the dispensing and cultivation of medical marijuana in response to the Arizona Medical Marijuana Act (AMMA) approved by the Arizona electorate on November 2, 2010.

The proposed zoning amendments would include adding medical marijuana-related definitions to Article 2 (Definitions) and amending Articles 6, 12, 13 and 14 (Zoning Districts). Furthermore, the proposed amendments to Article 18 (Site Development Standards) consist of dedicated minimum setbacks and other requirements for medical marijuana dispensaries and infusion facilities.

I. BACKGROUND

The Arizona Medical Marijuana Act (AMMA) legalized the use of marijuana to treat specific debilitating medical conditions, and allowed for the creation of medical marijuana uses operated by nonprofit organizations for the cultivation, and dispensing of medical marijuana products. With the passing of the AMMA, there are few land use and zoning restrictions for where medical marijuana dispensaries and offsite marijuana cultivation can be located. However, the AMMA gives counties and municipalities the authority to zone for use related to medical marijuana. The AMMA states that, "*Cities, towns and counties may enact reasonable zoning regulations that limit the use of land for registered medical marijuana dispensaries to specified areas...*"

Arizona Department of Health Services (ADHS) Requirements

In accordance with the requirements of the Act, the Arizona Department of Health Services (ADHS) is required to adopt and enforce a regulatory system for the distribution of marijuana for

Qualifying Patient:

A "qualifying patient" is defined as a person who has been diagnosed by a physician as having a debilitating medical condition, such as cancer, glaucoma, Lou Gehrig's Disease, Alzheimer's disease, among others. In addition, a patient may qualify by having a medical condition that generates severe and chronic pain, severe nausea, seizures, or severe and persistent muscle spasms. A qualifying patient may obtain up to 2.5 ounces of marijuana in a 14-day period from a registered medical marijuana dispensary. If the qualifying patient's home is located more than 25 miles from the nearest medical marijuana dispensary, the patient may cultivate up to 12 marijuana plants.

Designated Caregiver:

A designated caregiver is an ADHS licensed person that has agreed to assist with a patient's medical use of marijuana. Designated caregivers are permitted to grow up to 12 plants for up to 5 patients, plus an additional 12 plants for his/her use, for a maximum of 72 plants that may be cultivated on their property if a dispensary is located more than 25 miles away.

Medical Marijuana Dispensary:

The ADHS will issue approximately 125-129 dispensary licenses statewide that will be allocated based on Community Health Analysis Areas (CHAAs). CHAA's are geographic areas based on population, established by ADHS for use by public health programs. Cochise County has six designated CHAAs (*see - attached map*) so the ADHS can issue up to six medical marijuana dispensaries within Cochise County.

Per State requirements, dispensaries may cultivate marijuana only in an enclosed and locked facility, and may acquire product from a registered qualifying patient or designated caregiver if the patient or caregiver is not compensated for the product. Dispensaries and marijuana cultivation cannot be within 500 feet of an existing public or private school; *this is the only land use specified in the Act where minimum separation is required*. The AMMA also sets forth other various restrictions on the facilities that will house medical marijuana uses, such as:

- Facilities shall have a single secure entrance;
- Facilities shall implement appropriate security measures to deter and prevent theft; and
- Prohibits on-site consumption.

Potential Impacts

The impact that medical marijuana dispensaries have on the surrounding areas is the focus of debate in a dozen or so states in which the use of medical marijuana is currently permitted.

There are concerns that dispensaries attract crime, provide a front for dealing illegal drugs, harm property values, and attract drivers driving under the influence of marijuana. Medical marijuana dispensaries are a very new type of land use, one that did not exist until quite recently when the federal government announced it would no longer investigate and prosecute medical marijuana dispensaries that operate in accordance with state law.

As a result, no definitive comprehensive studies exist of the long-term impact of medical marijuana dispensaries on surrounding properties. However, there is much anecdotal evidence supporting nearly all positions on this issue and, as such, specific documented guidance is lacking.

Work Session with the Board of Supervisors

On February 28, 2011, Staff held a work session with the Board in order to get guidance and direction that would enable staff in the development of the proposed language and amendments to the zoning regulations for Medical Marijuana uses.

During this work session, staff presented various options related to the zoning modifications. The Board directed Staff to develop language to codify Medical Marijuana uses or activities through the special use process in the RU-4 (and larger), GB, LI and HI zoning classifications with dedicated, specific site development standards applicable only to medical marijuana dispensaries, infusion and cultivating facilities. The following proposed text amendments reflect the Supervisors' direction.

Proposed Amendments to the Zoning Regulations

The following proposed text amendments sets forth reasonable zoning regulations for the location of Medical Marijuana uses within unincorporated Cochise County. They seek to provide appropriate locations in which medical marijuana cultivation, dispensaries and infusion facilities may be located within the County while attempting to minimize any secondary effects the facilities may have on surrounding land uses, particularly residential uses. As noted, the AMMA requires that dispensaries and cultivation cannot be within 500 feet of an existing public or private school.

Again, the proposed amendments have been drafted with the dual objectives of providing adequate opportunity for the location of medical marijuana land uses in appropriate locations within the County while minimizing any potential secondary adverse impacts.

Article 2 (Definitions)

The proposed amendments to Article 2 (Definitions) classify medical marijuana uses into the following land use categories:

1. Medical Marijuana Cultivation Facility:

A building, structure, or premises used for the cultivation and storage of medical marijuana that is physically separate and off-site from a medical marijuana dispensary.

2. Medical Marijuana Dispensary:

A nonprofit medical marijuana dispensary duly registered and certified pursuant to A.R.S. § 36-2801 that sells, distributes, transmits, gives, dispenses, or otherwise provides medical marijuana to qualifying patients.

3. Medical Marijuana Dispensary Cultivation Facility:

A building, structure or premises where marijuana will be cultivated for sale at a non-profit medical marijuana dispensary duly registered and certified pursuant to A.R.S. § 36-2804.

4. Medical Marijuana Infusion Facility:

A facility that incorporates medical marijuana into consumable/edible goods by means of cooking, blending, or any other type of incorporation.

5. Medical Marijuana Uses:

Shall include collectively medical marijuana cultivation facilities, medical marijuana dispensaries, medical marijuana dispensary cultivation facilities, medical marijuana infusion facilities and medical marijuana use, per Arizona Revised Statutes Title 36, Chapter 28.1.

Zoning Districts (Articles 6, 12, 13 and 14)

The Zoning District amendments would allow Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities and Medical Marijuana Infusion Facilities to be located within the RU-4, RU-10, RU-18, RU-36, GB and LI zoning districts subject to Special Use Permit approval. Furthermore, dedicated or specific minimum setback requirements would be imposed in an effort to create a buffer to minimize the potential impact upon surrounding land uses.

It is recommended that Medical Marijuana Cultivation Facilities, Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities and Medical Marijuana Infusion Facilities be located no closer than 500 feet, as measured from the property boundary, from the following land uses:

- 1. Any other medical marijuana dispensary or infusion facility*
- 2. Any library*
- 3. Schools (Private or Public)*
- 4. Day Care Centers (Private or Public)*

Furthermore, staff recommends that Medical Marijuana Cultivation Facilities, Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities and Medical Marijuana Infusion Facilities and be located no closer than 300 feet, as measured from:

- 1. Any existing residential use located in a residential zoning district or an approved subdivision. The distance would be measured in a straight and direct horizontal line between the closest exterior wall of the medical marijuana dispensary to the closest exterior wall of the nearest principal residential structure(s).*

Staff also recommends the following standards to be included in Article 18 (Site Development Standards) for Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, and Medical Marijuana Infusion Facilities:

1. *All Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, and Medical Marijuana Infusion Facilities shall be located in a permanent building and may not be located in a trailer, cargo container, or motor vehicle;*
2. *No Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, and Medical Marijuana Infusion Facilities shall provide drive-through services; and*
3. *No Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, and Medical Marijuana Infusion shall provide outdoor seating areas.*

Medical Marijuana Cultivation Facilities:

The amendments would allow Medical Marijuana Cultivation Facilities to be located within the RU-4, RU-10, RU-18, RU-36, GB, LI and HI zoning districts subject to Special Use Permit approval, with a minimum 300 feet setback from any existing residential use located in a residential zoning district or an approved subdivision (500-ft. from schools, per the ADHS). The distance would be measured in a straight and direct horizontal line between the closest exterior wall of the medical marijuana cultivation facility to the closest exterior wall of the nearest principal residential structure(s).

Planning and Zoning Commission Meeting

The Planning and Zoning Commission considered the recommended text amendments at their regular meeting on March 9, 2011. The discussion focused on the recommended 300-ft. minimum separation Medical Marijuana uses would have from existing residential uses in residential zoning districts (and approved subdivisions). A question arose about how the proposed 300-ft. minimum setback requirement would affect neighboring residential property owners. There was concern that neighboring property owners would be required to adhere to the 300-ft. minimum separation, thus potentially rendering large portions of neighboring residential property "unusable" under certain circumstances, and thus restricting neighboring residents' property rights. However, neighboring property owners would not be restricted by the minimum setback, only Medical Marijuana uses would be required to comply.

There was also discussion about the potential for large numbers of caregiver growing operations in the County. Staff indicated that the Arizona Department of Health Services would have considerable oversight of the caregiver and patient components of the AMMA, and due to expected enforcement difficulties, Staff suggested that caregivers should not be required to abide by local land-use restrictions.

At the public hearing, a constituent suggested restricting Medical Marijuana Cultivation Facilities affiliated with County Medical Marijuana Dispensaries and Infusion Facilities to Cochise County in order to maximize revenue for the County (the State allows dispensary-affiliated cultivation to occur outside of respective jurisdictions).

The Commission voted unanimously (7-0) to forward a recommendation of approval to the Board of Supervisors with Staff's recommended text amendments.

V. RECOMMENDATION

Staff recommends that the Board of Supervisors adopt the Zoning Ordinance amending the Zoning Regulations to include text amendments for various Medical Marijuana uses. The amendments would include adding definitions to Article 2 to classify medical marijuana uses into specific land use categories, as well as Zoning District amendments permitting Medical Marijuana Dispensary Cultivation Facilities, Medical Marijuana Dispensaries and Medical Marijuana Infusion Facilities in the RU-4, RU-10, RU-18, RU-36, GB and LI Zoning Districts subject to Special Use Permit approval. These uses would have dedicated minimum setback requirements from existing residential uses in residential Zoning Districts and approved subdivisions and the other requirements noted above. Furthermore, the amendments would include a provision permitting Medical Marijuana Cultivation Facilities in the RU-4, RU-10, RU-18, RU-36, GB, LI and HI Zoning Districts with a Special Use Permit and with dedicated minimum setback requirements from existing residential uses in residential Zoning Districts and approved subdivisions.

VI. ATTACHMENTS

- A. Recommended Amendments to the Zoning Regulations
- B. Community Health Analysis Areas Map