MARANA AZ
ESTABLISHED 1977

MARANA PLANNING COMMISSION
REGULAR COMMISSION MEETING
NOTICE AND AGENDA
11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, September 25, 2019, at or after 6:30 PM

Thomas Schnee, Chairman
Don Duncan, Vice Chair
Terry Fehrmann, Commissioner
Ronald Hill, Commissioner
Richard Miller, Commissioner
Bryan Schachter, Commissioner
Sharon Tyson, Commissioner

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Marana Planning Commission and to the general public that the Planning Commission will hold a meeting open to the public on September 25, 2019, at or after 6:30 PM located in the Council Chambers of the Marana Municipal Complex, 11555 W. Civic Center Drive, Marana, Arizona.

ACTION MAY BE TAKEN BY THE COMMISSION ON ANY ITEM LISTED ON THIS AGENDA. Revisions to the agenda can occur up to 24 hours prior to the meeting. Revised agenda items appear in *italics*.

Marana Planning Commission
Welcome to this public meeting of the Marana Planning Commission. The Commission consists of seven citizens who are appointed by the Town Council and serve without pay. For the most part, the Commission acts in an advisory capacity to the Town Council on matters related to land use planning and zoning. Citizens are encouraged to address the Commission with their concerns on agenda items during the public testimony portions of the meeting, or other issues at the Call to the Public.

Meeting Times
Regular Commission meetings are usually held on the last Wednesday of each month at 6:30 PM at the Marana Municipal Complex, although the date or time may change and additional meetings may be called at other times and/or places.

Speaking at Meetings
If you are interested in speaking to the Commission during the Call to the Public or Public Hearings, you must fill out a speaker card (located in the lobby outside the Council Chambers) and deliver it to the Planning Commission Secretary prior to the convening of the meeting.

All persons attending the Commission meeting, whether speaking to the Commission or not, are expected to observe the Commission rules, as well as the rules of politeness, propriety, decorum and good conduct. Any person interfering with the meeting in any way, or acting rudely or loudly will be removed from the meeting and will not be allowed to return.

Accessibility
To better serve the citizens of Marana and others attending our meetings, the Council Chambers are wheelchair and handicapped accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk at (520) 382-1999. Requests should be made as early as possible to arrange the accommodation.

Agendas
Copies of the Agenda are available the day of the meeting in the lobby outside the Council Chambers or online at www.maranaaz.gov.

This Notice and Agenda posted no later than 24 hours prior to the meeting, at the Marana Municipal Complex, 11555 W. Civic Center Drive, the Marana Operations Center, 5100 W. Ina Road, and at www.maranaaz.gov.

REGULAR COMMISSION MEETING

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION/MOMENT OF SILENCE

ROLL CALL

CALL TO THE PUBLIC
At this time, any member of the public is allowed to address the Planning Commission on any issue within the jurisdiction of the Planning Commission, except for items scheduled for a Public Hearing at this meeting. The speaker may have up to three (3) minutes to speak. Any persons wishing to address the Commission must complete a speaker card (located at the rear of the Commission Chambers) and deliver it to the Commission Secretary prior to this agenda item being called. Pursuant to the Arizona Open Meeting Law, at the conclusion of Call to the Public, individual members of the Commission may respond to criticism made by those who have addressed the Commission, and may ask staff to review the matter, or may ask that the matter be placed on a future agenda. However, members of the Commission shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

APPROVAL OF AGENDA

ANNOUNCEMENTS

GENERAL ORDER OF BUSINESS

A. Approval of the August 28, 2019 Meeting Minutes

B. Public Hearings

1. **PCM1909-001 Amending Marana Town Code Title 17 (Land Development) by revising section 17-6-14 (medical marijuana dispensary)** to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit; and considering whether to create related exceptions to the limitation on the number of permitted medical marijuana dispensaries (Frank Cassidy)

C. Commission Action

Opening remarks by an applicant should not exceed ten minutes. Comments by others should not exceed three minutes.

D. Informational Items/Possible Action Items

Recommendation to move the following Planning Commission regular meeting dates; November 27, 2019 to November 20, 2019 and December 25, 2019 to December 18, 2019. (Jason Angell)

FUTURE AGENDA ITEMS

EXECUTIVE SESSIONS

Pursuant to A.R.S. 38-431.03, the Planning Commission may vote to go into executive session, which will not be open to the public, to discuss certain matters.

Executive Session pursuant to A.R.S. §38-431.03 (A), Planning Commission may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

ADJOURNMENT

Planning Commission Regular Meeting
Meeting Date: 09/25/2019

To: Planning Commission

From: Terri Byler, Executive Assistant

Date: September 25, 2019

Subject: **Approval of the August 28, 2019 Meeting Minutes**

Attachments

August 28, 2019 Planning Commission Draft Minutes

MARANA PLANNING COMMISSION
REGULAR COMMISSION MEETING
11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, August 28, 2019, at or after 6:30 P.M.

Thomas Schnee, Chairman
Don Duncan, Vice Chair
Terry Fehrmann, Commissioner
Ronald Hill, Commissioner
Richard Miller, Commissioner
Bryan Schachter, Commissioner
Sharon Tyson, Commissioner

MINUTES

DRAFT

CALL TO ORDER. Chairman Schnee called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE AND INVOCATION/MOMENT OF SILENCE. Led by **Chairman Schnee**.

ROLL CALL. Commission Secretary Terri Byler called roll. Commissioner Tyson was absent. A quorum was present.

CALL TO THE PUBLIC. No speaker cards presented.

APPROVAL OF AGENDA. ***Motion to approve by Commissioner Fehrmann, seconded by Commissioner Miller. Passed unanimously.***

ANNOUNCEMENTS. General Plan 60-day review period deadline to submit comments is Friday, September 27, 2019. (Jason Angell)

GENERAL ORDER OF BUSINESS. Approve Regular Planning Commission Meeting Minutes from July 31, 2019. ***Motion to approve by Vice Chair Duncan, seconded by Commissioner Miller. Passed unanimously.***

PUBLIC HEARINGS.

1. PCZ1907-001 Marana Main Street Specific Plan Amendment A request for a recommendation to the Town Council for approval of the Marana Main Street Specific Plan Amendment to allow for the development of additional businesses with drive-through facilities in the Highway Support Commercial land use designation area, without the requirement for a conditional use permit, and to allow for the development of a pharmacy with associated drive-through on the southeast corner of Marana Main Street and Sandario Road in the Marana Main Street Commercial land use designation area, upon approval of a conditional use permit (Cynthia Ross)

Cynthia Ross provided a PowerPoint presentation on the Marana Main Street Specific Plan. Below is a brief overview of the PowerPoint.

Applicant - Bruce Call was requesting approval of an amendment to the Marana Main Street Specific Plan; consisting of 28 acres - located south of Marana Road and east of Sandario Road.

DRAFT

Amendment Request:

1. Allow additional businesses with drive-through facilities in the specific plan area.
2. Updated map exhibits to reflect current conditions.
3. A revised conceptual plan showing proposed general layout of lots in the Highway Support Commercial land use area.

Specific Plan Proposed Amendments:

1. Businesses with associated drive-through to be permitted on all lots in the Highway Support Commercial land use area *without* the requirement of a conditional use permit.

2. Pharmacy business with associated drive-through window on Lot 3 (located on the SEC of Marana Main Street and Sandario Road) *with* approval of a Conditional Use Permit.

Main Street Commercial Lot 3 pharmacy business drive-through criteria:

1. The drive-through window must be located behind and screened from view from the Marana Main Street.
2. Stacking of cars into the driveway must use the parking area only. The cars will not be permitted to stack in the access driveway.
3. Location of the access driveway must be designed to minimize impact to pedestrian activity.
4. The design precludes vehicular access conflicting with an existing or planned adjacent uses.
5. The location of the facility and drive-through must be positioned in order to minimize noise and odors.

Chairman Schnee opened the public hearing. **Linda Coronado** asked a general question regarding the proposed Center Street connection to the frontage road. **Keith Brann** explained that Center Street will be a two-way access similar to Grier Road and Postvale Road. Lots 13-17 will not have direct access to the frontage road. Access to the lots will be internal through the development. **Chairman Schnee** closed the public hearing.

Chairman Schnee had no concerns with allowing drive-throughs in the Highway Support Commercial area. He was also in favor of the pharmacy with drive-through proposed for Lot 3. **Commissioner Fehrmann** noted there was no date included in Condition #15 of the staff report; relating to an annual report being submitted within 30 days of the anniversary of the Town Council's approval of the Specific Plan. **Frank Cassidy** clarified that date would be November 18, 2008; the date of the approval of the original specific plan. **Cynthia Ross** noted the date will be included in the condition in the staff report for Town Council, if approved by Planning Commission. **Vice Chair Duncan** liked the idea of the planned pharmacy.

Motion to approve by Chairman Schnee, seconded by Commissioner Schachter. Passed unanimously. 6-0

COMMISSION ACTION.

1. DPP1906-002 Mountain View Tours Development Plan Relating to Development; approving a development plan for Mountain View Tours at 9817 N. Casa Grande Hwy. (Steven E. Vasquez)

Providing an overview, **Steven Vasquez** noted this was a request for approval of a development plan for Mountain View Tours. The zoning is "F – Specific Plan" (Continental Ranch Specific Plan) and the land use designation is "I – Industrial." Per the Continental Ranch Specific Plan, a development plan is required be approved by the Planning Commission.

<u>The proposed development includes:</u>

- Administration & maintenance facility
- 16,309 sq. ft. building area
- 15' 10" proposed building height
- 20 foot landscape buffer along Casa Grande Hwy

Chairman Schnee felt it would be a nice addition to the area. No other comments were offered from the Commission.

Motion to approve by Commissioner Hill, seconded by Commissioner Miller. Passed unanimously. 6-0

INFORMATIONAL ITEMS/POSSIBLE ACTION ITEMS.

DRAFT

FUTURE AGENDA ITEMS.

ADJOURNMENT. ***Motion to adjourn at 6:49 p.m. by Commissioner Hill, seconded by Commissioner Miller. Passed unanimously.***

CERTIFICATION.

I hereby certify that the foregoing are the true and correct minutes of the Marana Planning Commission meeting held on August 28, 2019. I further certify that a quorum was present.

Terri Byler, Commission Secretary

DRAFT

Planning Commission Regular Meeting

Meeting Date: 09/25/2019

To: Planning Commission

From: Frank Cassidy, Town Attorney

Date: September 25, 2019

Strategic Plan Focus Area:
Not Applicable

Subject: **PCM1909-001 Amending Marana Town Code Title 17 (Land Development) by revising section 17-6-14 (medical marijuana dispensary)** to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit; and considering whether to create related exceptions to the limitation on the number of permitted medical marijuana dispensaries (Frank Cassidy)

Discussion:

A dispute has arisen between Town staff and the landowner of one of the two Marana medical marijuana dispensaries. The landowner contends that the landowner has legal rights under the conditional use permit (CUP) obtained for the property by the dispensary operator. Town staff contends that Marana Town Code section 17-6-14 (medical marijuana dispensary) as currently written provides for the issuance of a CUP to a dispensary operator and gives no rights under the CUP to the landowner. The landowner cites as support for its position the general CUP rules in Marana Town Code section 17-3-2 paragraph O, which provides that a CUP runs with the land. Town staff cites as support for its position the language of section 17-6-14, which is focused entirely on the dispensary operator.

Although Town staff does not believe that section 17-6-14 currently gives dispensary CUP rights to a property owner, Town staff supports the adoption of a text amendment that would give those rights to a property owner. To that end, Town staff has prepared two alternative text amendments to section 17-6-14 for the Commission's consideration and recommendation to the Council.

Both alternative ordinances expressly leave a medical marijuana dispensary CUP in place for the property after a dispensary operator has moved or halted operation. The CUP remains effective for the location until the landowner either (i) leases or sells the property to a new dispensary operator (who must submit the information required and comply with the regulations set forth in section 17-6-14) or (ii) loses the CUP. Marana Town Code section 17-3-2 paragraph K provides that a CUP generally expires upon discontinuance for a period of six months. Arizona case law requires that the discontinuance be the result of conduct attributable to the property owner, so the mere passage of six months may be insufficient to cause the CUP to expire. If the property owner ceases marketing the property for use as a medical marijuana dispensary for a period of six months or leases the property for some other use, the CUP would lapse.

The substantive difference in the two alternative ordinances involves the Town's cap on the number of medical marijuana dispensaries. Marana Town Code section 17-6-14 paragraph F currently provides:

> The number of medical marijuana dispensaries permitted within the town limits of Marana shall be limited to two. The number of permitted medical marijuana dispensaries shall be increased by one for each Marana population increase of 50,000 over and above the official 2010 census figure for Marana.

The first alternative ordinance makes no change to this two-dispensaries cap. As a result, a dispensary

operator who chooses to leave a current Marana location would be unable to apply for a CUP for a medical marijuana dispensary anywhere else in Marana unless and until one of the two dispensary CUPs expires. One could argue that the first alternative ordinance thereby gives a preference to the property owner over the dispensary operator.

The second alternative ordinance makes an exception to the two-dispensary cap for situations where a current Marana dispensary operator seeks a new medical marijuana dispensary CUP within Marana and leaves the previous dispensary location vacant. In this situation, the second alternative ordinance would allow the property owner to keep the dispensary CUP for the previous dispensary location and would allow the dispensary operator to seek a new CUP in Marana. This alternative removes any argument about preference to the property owner, but erodes the two-dispensary cap. Sequential closure and relocation of Marana medical marijuana dispensaries could result in many more than two medical marijuana dispensaries if the second alternative ordinance is adopted.

Staff Recommendation:

Town staff recommends that the Planning Commission recommend Council adoption of the first alternative ordinance, revising Marana Town Code section 17-6-14 to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit, but leaving in place the two-dispensary limitation.

Suggested Motion:

Option 1 (recommended): I move to recommend Council adoption of the first alternative ordinance, revising Marana Town Code section 17-6-14 to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit, but leaving in place the two-dispensary limitation.

Option 2: I move to recommend Council adoption of the second alternative ordinance, revising Marana Town Code section 17-6-14 to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit, and creating an exception to the two-dispensary limitation.

Attachments

MMJ Ord Option 1

MMJ Ord Option 2

MARANA ORDINANCE NO. 2019.XXX

RELATING TO DEVELOPMENT; AMENDING MARANA TOWN CODE TITLE 17 (LAND DEVELOPMENT) BY REVISING SECTION 17-6-14 (MEDICAL MARIJUANA DISPENSARY) TO ADD NEW PARAGRAPHS G AND H, CLARIFYING THE RIGHTS OF A PROPERTY OWNER UNDER A MEDICAL MARIJUANA DISPENSARY CONDITIONAL USE PERMIT

WHEREAS a disagreement in the interpretation of Town Code section 17-6-14 (medical marijuana dispensary) has arisen between Town staff and the owner of a property where a medical marijuana dispensary is operating pursuant to a Town-issued conditional use permit; and

WHEREAS Town staff proposes to moot the disagreement with an ordinance amending Town Code section 17-6-14 to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit; and

WHEREAS the Town Council finds that adoption of this ordinance is in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, as follows:

SECTION 1. Marana Town Code Title 17 (Land Development) is hereby amended by revising section 17-6-14 (medical marijuana dispensary) to add new paragraphs G and H as follows:

G. The medical marijuana dispensary operator and the owner of the property shall jointly share the rights and obligations of a medical marijuana dispensary conditional use permit issued under this section.

H. If a medical marijuana dispensary ceases to operate at a property for which a conditional use permit has been issued under this section, the owner of the property shall have the right to lease or sell the property to another medical marijuana dispensary operator without the need for a new medical marijuana dispensary conditional use permit, subject to the following conditions and requirements:

1. A new conditional use permit shall be required if the medical marijuana dispensary conditional use permit expires by operation of section 17-3-2 (conditional use permits) paragraph K (expiration upon discontinuance).

2. Before opening to the public, the new medical marijuana dispensary operator shall provide to the town the information and documentation set forth in subparagraphs 1 through 7 and 9 of paragraph B of this section.

3. The new medical marijuana dispensary operator shall obtain a new medical marijuana dispensary conditional use permit if the planning director determines that the floor plan provided as required by subparagraph 7 of paragraph B of this section is substantially different from the floor plan approved in the medical marijuana dispensary conditional use permit. For purposes of making this determination, the planning director shall disregard floor plan changes required by the state as a condition of the operator's state license.

SECTION 2. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. All ordinances, resolutions, or motions and parts of ordinances, resolutions, or motions of the Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. This ordinance shall be effective on the 31st day after its adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, Arizona, this ____ day of _____, 2019.

_____
Mayor Ed Honea

ATTEST:

_____
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

MARANA ORDINANCE NO. 2019.XXX

RELATING TO DEVELOPMENT; AMENDING MARANA TOWN CODE TITLE 17 (LAND DEVELOPMENT) BY REVISING SECTION 17-6-14 (MEDICAL MARIJUANA DISPENSARY) TO AMEND PARAGRAPH F AND ADD NEW PARAGRAPHS G AND H, CLARIFYING THE RIGHTS OF A PROPERTY OWNER UNDER A MEDICAL MARIJUANA DISPENSARY CONDITIONAL USE PERMIT AND CREATING RELATED EXCEPTIONS TO THE LIMITATION ON THE NUMBER OF PERMITTED MEDICAL MARIJUANA DISPENSARIES

WHEREAS a disagreement in the interpretation of Town Code section 17-6-14 (medical marijuana dispensary) has arisen between Town staff and the owner of a property where a medical marijuana dispensary is operating pursuant to a Town-issued conditional use permit; and

WHEREAS Town staff proposes to moot the disagreement with an ordinance amending Town Code section 17-6-14 to clarify the rights of a property owner under a medical marijuana dispensary conditional use permit; and

WHEREAS the Town Council finds that adoption of this ordinance is in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, as follows:

SECTION 1. Marana Town Code Title 17 (Land Development) is hereby amended by revising section 17-6-14 (medical marijuana dispensary) to amend paragraph F and add new paragraphs G and H as follows (with deletions shown with ~~strikeouts~~ and additions shown with double underlining):

[Paragraphs A through E are unchanged.]

F. The number of medical marijuana dispensaries permitted within the town limits of Marana shall be limited to two.

1. The number of permitted medical marijuana dispensaries shall be increased by one for each Marana population increase of 50,000 over and above the official 2010 census figure for Marana.

2. A medical marijuana dispensary operating in the town limits pursuant to a conditional use permit issued under this section may apply for a conditional use permit for a different location in the town limits without violating the limitation on dispensaries set forth in this paragraph F.

3. A new medical marijuana dispensary conditional use permit issued pursuant to paragraph H.3 below is not subject to the limitation on dispensaries set forth in this paragraph F so long as the property owner's medical marijuana dispensary conditional use permit has not yet expired by operation of section 17-3-2 (conditional use permits) paragraph K (expiration upon discontinuance).

G. The medical marijuana dispensary operator and the owner of the property shall jointly share the rights and obligations of a medical marijuana dispensary conditional use permit issued under this section.

H. If a medical marijuana dispensary ceases to operate at a property for which a conditional use permit has been issued under this section, the owner of the property shall have the right to lease or sell the property to another medical marijuana dispensary operator without the need for a new medical marijuana dispensary conditional use permit, subject to the following conditions and requirements:

1. A new conditional use permit shall be required if the medical marijuana dispensary conditional use permit expires by operation of section 17-3-2 (conditional use permits) paragraph K (expiration upon discontinuance).

2. Before opening to the public, the new medical marijuana dispensary operator shall provide to the town the information and documentation set forth in subparagraphs 1 through 7 and 9 of paragraph B of this section.

3. The new medical marijuana dispensary operator shall obtain a new medical marijuana dispensary conditional use permit if the planning director determines that the floor plan provided as required by subparagraph 7 of paragraph B of this section is substantially different from the floor plan approved in the medical marijuana dispensary conditional use permit. For purposes of making this determination, the planning director shall disregard floor plan changes required by the state as a condition of the operator's state license.

SECTION 2. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. All ordinances, resolutions, or motions and parts of ordinances, resolutions, or motions of the Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. This ordinance shall be effective on the 31st day after its adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, Arizona, this ____ day of _____, 2019.

_____
Mayor Ed Honea

ATTEST:

_____
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

Planning Commission Regular Meeting

Meeting Date: 09/25/2019

To: Planning Commission

From: Terri Byler, Executive Assistant

Date: September 25, 2019

Subject: **Informational Items/Possible Action Items**

Recommendation to move the following Planning Commission regular meeting dates; November 27, 2019 to November 20, 2019 and December 25, 2019 to December 18, 2019. (Jason Angell)

Attachments

No file(s) attached.