

# Staff Report to the Board of Supervisors

## *Summary of Proposed Medical Marijuana Ordinance*



**COMMUNITY DEVELOPMENT DIVISION**

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## *Summary of Proposed Medical Marijuana Ordinance*

### **Proposition 203**

The intent of Proposition 203 is to allow the use of marijuana for alleviating medical problems for qualifying patients. This proposition allows the establishment of dispensaries, cultivation sites and designated caregivers solely for the purpose of growing and distributing medical marijuana.

The Director of the Department of Health Services has been charged with responsibility to develop the rules for this program within 120 days of the date the Secretary of State ratifies this proposition. On December 17, 2010 the Director released a draft set of rules for public review and an update on January 31, 2011.

### **Guidelines for Developing Draft Ordinance**

On January 16<sup>th</sup> the Planning & Zoning Commission discussed Proposition 203 and provided direction to staff to do two things when drafting the proposed ordinance:

1. Model the Medical Marijuana Ordinance after the one prepared by Navajo County.
2. Utilize the Memo dated September 7, 2010 to the Pima County Board of Supervisors from C.H. Huckelberry, Pima County Administrator as a guideline for creating our ordinance.

### **Summary of Proposed Medical Marijuana Ordinance**

This ordinance is directed towards five potential land use activities:

1. Medical Marijuana Dispensaries and cultivation together M1 Zoning Only w/CUP
2. Medical Marijuana Dispensaries only M1 Only w/CUP)
3. Medical Marijuana Caregiver Cultivation (Residential Zoning. With CUP)
4. Medical Marijuana Qualifying Patient Cultivation (Residential Zoning, With CUP)
5. Medical Marijuana Infusion (*or Manufacturing*) Facility in M1 zoning with /CUP

Medical Marijuana in residential zoning is permitted only as an accessory use by a caregiver and/or qualified patient and a Conditional Use Permit. Before the accessory use can be allowed the primary use must first be established.

A qualified patient can grow up to 12 plants and a caregiver can provide for up to five qualified patients so they can have up to 72 plants. Cultivation must occur in a secure area as defined by the Department of Health Services in the rules for the program.

If a caregiver or qualified patient live within 25 miles of a Marijuana Dispensary they cannot cultivate medical marijuana on their property.

Additional issues included the following:

1. Permit fees for a Conditional Use Permit for a Designated Caregiver for a Cultivation Site shall be \$5,000.
2. Permit fees for a Conditional Use Permit for a Qualified Patient for a Cultivation Site shall be \$1,000.
3. For purposes of this Conditional Use Permit the notification area for the application shall be 1,500 feet.
4. A Conditional Use Permit is valid for one year and then must be renewed along with the regular fee as established in items (a) and (b) of this section. Any C.U.P. may be revoked for failure to comply with all conditions.
5. The qualifying patient and designated caregiver cultivation location must be accessory to the primary use of residential, must not be detectable from the exterior of the property in which the cultivation takes place.
6. Medical Marijuana cultivation as an accessory use to the qualifying patient's or caregiver primary residence shall only be permitted if the residence is located at least 25 miles distant from a Medical Marijuana Dispensary and in full compliance with regulations as established by the Department of Health Services for Medical Marijuana.

A dispensary, Infusion and Cultivation can all be permitted in M1 zoning districts.

Several development standards have been added to the Conditional Use Permit process for Medical Marijuana Dispensaries, Medical Marijuana Infusion and cultivation areas:

1. The notification requirements have been expanded to 1500 feet (currently only 300 feet)
2. A 1,500 foot separation is required from other dispensaries and cultivation sites, churches, public or private elementary or secondary schools, Public or private daycare, preschool nursery or kindergarten schools, public parks and recreational facilities.
3. No Drive thru is permitted
4. No onsite consumption is permitted
5. Hours of operation limited to 8 AM to 5 PM daily, Monday through Friday
6. Dispensaries must be separated by at least 35 miles
7. Conditional Use Permit application fee is \$5,000
8. Conditional Use Permit must be renewed each year for the same cost as original application.
9. Can only be in M1 Zoning District
10. Hours of operation for Dispensary shall be between 8 AM and 5 PM, Monday through Friday. No weekend hours are permitted.
11. Must be in a site built structure.

### **Addendum to Report Dated January 21, 2011**

Staff has made a diligent effort to incorporate more control over the growth of marijuana by either the qualified patient or caregiver. The problem we have encountered is that the Department of Health Services may not be permitted to release this information to us due to the following Statute:

36-2810 Confidentiality

- A. The following information received and records kept by the Department for purposes of administering this chapter are confidential, exempt from Title 39, Chapter 1, Article 2, Exempt from section 36-105 and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the department to perform official duties of the department Pursuant to this chapter.
1. APPLICATIONS OR RENEWALS, THEIR CONTENTS AND SUPPORTING INFORMATION SUBMITTED BY QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS, INCLUDING INFORMATION REGARDING THEIR DESIGNATED CAREGIVERS AND PHYSICIANS.

While we fully recognize the protection afforded the qualified patient, we do not understand why a caregiver who may not have HIPPA protection is afforded the same protection by our State. A Designated Caregiver does not need to be a qualified patient according to this definition.

The following is the definition of a Designated Caregiver from the Statutes:

2. **"DESIGNATED CAREGIVER"** MEANS A PERSON WHO:
  - a. IS AT LEAST TWENTY-ONE YEARS OF AGE.
  - b. HAS AGREED TO ASSIST WITH A PATIENT'S MEDICAL USE OF MARIJUANA.
  - c. HAS NOT BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
  - d. ASSISTS NO MORE THAN FIVE QUALIFYING PATIENTS WITH THE MEDICAL USE OF MARIJUANA.
  - e. MAY RECEIVE REIMBURSEMENT FOR ACTUAL COSTS INCURRED IN ASSISTING A REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA IF THE REGISTERED DESIGNATED CAREGIVER IS CONNECTED TO THE REGISTERED QUALIFYING PATIENT THROUGH THE DEPARTMENT'S REGISTRATION PROCESS. THE DESIGNATED CAREGIVER MAY NOT BE PAID ANY FEE OR COMPENSATION FOR HIS SERVICE AS A CAREGIVER. PAYMENT FOR COSTS UNDER THIS SUBDIVISION SHALL NOT CONSTITUTE AN OFFENSE UNDER TITLE 13, CHAPTER 34 OR UNDER TITLE 36, CHAPTER 27, and ARTICLE 4.

I have deleted the amendments to the Residential Zoning Districts because we have classified this use as an accessory use with description in the definition section.

**Commission Recommendation:**

The Planning & Zoning Commission met on February 3<sup>rd</sup> to consider this application and have recommended to the Board of Supervisors approval of the proposed ordinance as presented in the proceeding pages.

