

**TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION
Date: January 27, 2011**

SUBJECT: Medical Marijuana Act Amendments to Town Code

SUBMITTING DEPARTMENT: Community Development Department

PREPARED BY: Carol Cornell, Paralegal

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: (a) Ordinance No. 753; (b) Resolution No. 1733; (c) Public Record entitled “Nonprofit Medical Marijuana Dispensaries and Cultivation”, (d) Prop 203; (e) Jurisdiction Comparisons, and (f) Written Comments Rose Law Firm

SUMMARY/BACKGROUND: On November 2, 2010, the voters of Arizona approved Proposition 203, the “Arizona Medical Marijuana Act” (AMMA), which provides for medical use, possession and cultivation of marijuana by and for persons suffering from defined medical conditions. The AMMA is codified in A.R.S. §36-2801 *et seq.*

Under the AMMA, the Arizona Department of Health Services (ADHS) is required to adopt rules for applications, registrations, operation, and inspection of medical marijuana dispensaries and cultivation facilities, as well as registration, verification and issuance of registry cards to dispensary agents, designated caregivers and qualifying patients. On December 17, 2010, ADHS released draft rules. Among other things, they require that applicants provide sworn statements certifying that they comply with local zoning restrictions. And, the AMMA specifically provides that municipalities may enact reasonable zoning restrictions that limit dispensaries and cultivation facilities to specific areas.

Law enforcement agencies and residents of other states that authorize the medical use of marijuana report numerous secondary negative effects, including an increase in violent crime. Therefore, Town staff has reviewed the issues and consulted with the League of Arizona Cities and Towns (League) in order to develop proposed amendments to the Town Zoning Code that serve to balance the interests involved, including the general public as well as qualifying patients and designated caregivers who may possess and use marijuana for medical purposes.

A model ordinance from the League was presented to the Town Council and the Prescott Valley Planning and Zoning Commission (P&Z) in a joint public session on November 18, 2010. At that time, staff was directed to prepare a similar ordinance for the Town and to present it to P&Z on December 13, 2010. At the conclusion of the P&Z meeting, staff was directed to amend the proposed draft to increase certain separation requirements between dispensaries and other sensitive uses, to allow for an increase of maximum square footage of floor area for dispensaries and storage areas pursuant to a Use Permit, and to require separation restrictions for additional uses not originally contemplated. Staff then presented a revised draft to P&Z on January 10, 2011, and P&Z unanimously recommended approval to the Town Council.

Some communities have proposed more restrictive separation requirements (e.g. up to a mile between dispensaries), while others have proposed only the minimum separation required under the AMMA (i.e. 500 feet between a dispensary and a public school). The City of Prescott has indicated it may not amend

its zoning code to apply any particular requirements to medical marijuana dispensaries and cultivation facilities. It may simply apply current zoning regulations under a “similar use” analysis. After looking at and considering all of these approaches (including the League model), Town staff believes the draft Ordinance recommended by P&Z is a reasonable and workable approach well within the mainstream of the state.

[Note that A.R.S. §9-802 provides for adoption by reference of particularly lengthy or complex ordinances when they are declared to be “public records”. It is proposed that these proposed amendments be first adopted by Resolution as a “public record”, then be adopted by reference by Ordinance No. 753.]

OPTIONS ANALYSIS: The Council may adopt the Ordinance as drafted; suggest revisions prior to adoption; or decline to adopt the proposed Ordinance.

ACTION OPTION: (a) Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign Resolution No. 1733 declaring the document entitled “Nonprofit Medical Marijuana Dispensaries and Cultivation” to be a public record, **OR** Motion not to approve Resolution No. 1733. **VOTE.**

(b) Motion to read Ordinance No. 753 adopting by reference that certain public record entitled “Nonprofit Medical Marijuana Dispensaries and Cultivation” on two separate occasions by title only, then place the same on final passage, **OR** Motion not to read Ordinance No. 753 **VOTE.**

[if the motion is in favor of reading Ordinance No. 753, the Mayor instructs the Town Clerk to read Ordinance No. 753 by title only for the first reading]

RECOMMENDATION: Staff recommends approval of Ordinance No. 753 adopting by reference that certain public record entitled “Nonprofit Medical Marijuana Dispensaries and Cultivation”.

FISCAL ANALYSIS: Under the AMMA, ADHS has exclusive authority to administer and monitor the operations of medical marijuana dispensaries and cultivation facilities. Therefore, it is not anticipated that the Town will have to devote more than the usual personnel time and resources to regulate the dispensaries and cultivation facilities.

REVIEWED BY:

Management Services Director _____ Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to _____