



City Council Staff Report

DATE: March 21, 2012 CONSENT CALENDAR

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 1804, CORRECTING BY AMENDMENT SECTION 93.23.15 OF THE PALM SPRINGS MUNICIPAL CODE RELATING TO MEDICAL CANNABIS COOPERATIVE AND COLLECTIVE SPECIAL CONDITIONS

FROM: David H. Ready, City Manager

BY: Office of the City Clerk

SUMMARY:

The City Council will consider adoption of Ordinance No. 1804.

RECOMMENDATION:

Waive further reading and adopt Ordinance No. 1804, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, CORRECTING BY AMENDMENT SECTION 93.23.15 OF THE PALM SPRINGS MUNICIPAL CODE RELATING TO MEDICAL CANNABIS COOPERATIVE AND COLLECTIVE SPECIAL CONDITIONS."

STAFF ANALYSIS:

On March 7, 2012, Ordinance No. 1804 was introduced for first reading, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, CORRECTING BY AMENDMENT SECTION 93.23.15 OF THE PALM SPRINGS MUNICIPAL CODE RELATING TO "MEDICAL CANNABIS COOPERATIVE AND COLLECTIVE SPECIAL CONDITIONS."

AYES: Councilmember Hutcheson, Councilmember Lewin, Mayor Pro Tem Foat, and Mayor Pougnet.

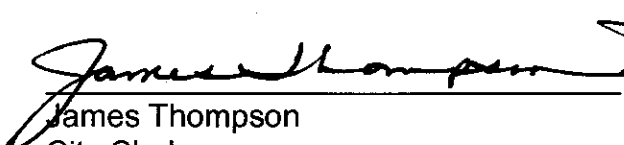
NOES: Councilmember Mills.

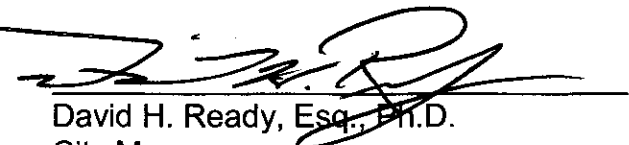
ABSENT: None.

ABSTAIN: None.

Item No. **2.E.**

This report provides for the City Council to waive further reading and adopt the ordinance. The ordinance shall be effective 30-days from adoption.


James Thompson
City Clerk


David H. Ready, Esq., Ph.D.
City Manager

/kdh
Attachment: Ordinance No. 1804

ORDINANCE NO. 1804

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, CORRECTING BY AMENDMENT SECTION 93.23.15 OF THE PALM SPRINGS MUNICIPAL CODE RELATING TO "MEDICAL CANNABIS COOPERATIVE AND COLLECTIVE SPECIAL CONDITIONS."

City Attorney's Summary

This Ordinance corrects an error in Section 93.23.15 of the Palm Springs Municipal Code relating to "Medical Cannabis Cooperative and Collective Special Conditions" inadvertently caused when an obsolete version of PSMC Section 93.22.00, relating to medical cannabis collectives and cooperatives, was used as the base document for Ordinance 1799. The purpose of Ordinance 1799 was to consolidate in one location in the Code, Conditions for Specific Uses that previously had been scattered in various locations within the City's Zoning Code. The provisions of Section 93.22.00 were relocated to the new Section 93.23.15 but did not include amendments to Section 93.22.00. This Ordinance corrects the medical cannabis cooperative and collective special conditions to reflect Ordinances 1766, 1769, and 1776 that had been previously approved by the City Council as amendments to the original medical cannabis ordinance.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAINS:

Section 1. Section 93.23.15 of the Palm Springs Municipal Code is amended to read:
Section 93.23.15 Medical Cannabis Cooperative or Collective Special Standards
(formerly 93.22.00)

A. No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Cannabis Cooperative or Collective shall be granted or permitted except in conformance with this Section.

B. Medical Cannabis Cooperatives or Collectives shall be permitted, upon application and approval of a regulatory permit in accordance with the criteria and process set forth in this Section.

C. No Medical Cannabis Cooperative or Collective shall be established, developed, or operated within five hundred (500) feet of a school, public playground or park, or any residential zone property, child care or day care facility, youth center, or church, or

within one thousand (1000) feet of any other Medical Cannabis Cooperative or Collective, and shall not be located on any property that is occupied with a commercial retail use where such use is the primary use on such property. All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Medical Cannabis Cooperative or Collective is, or will be located, to the nearest property line of those uses describe in this Subsection. Administrative modifications for this standard may be granted by the City Council pursuant to Section 94.06.01.B.

D. A Medical Cannabis Cooperative or Collective is not and shall not be approved as an accessory use to any other use permitted by this Zoning Code.

E. A Medical Cannabis Cooperative or Collective shall be parked at a rate of 1 space for every 250 gross square feet of office space, and 1 space for every 800 square feet of warehouse / cultivation space. Administrative modifications for this standard may be granted by the City Council pursuant to Section 94.06.01.B.

F. No more than three (3) Medical Cannabis Cooperatives and/or Collectives shall be maintained or operated in the City at any time. The City Council shall review and evaluate all qualified applications and will approve issuance of regulatory permits to the most qualified as determined through the Allotment Process described below. Where the City Council has reviewed qualified applications within three (3) years of any review and allotment proposal allowed under the provisions of this Section, the City Council may limit its review to one or more of the qualified applications reviewed and considered during such previous Allotment Process.

G. Prior to initiating operations and as a continuing requisite to conducting operations, the legal representative of the persons wishing to operate a Medical Cannabis Cooperative or Collective shall obtain a regulatory permit from the City Manager under the terms and conditions set forth in this Section. The legal representative shall file an application with the City Manager upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time. An application for a regulatory permit for a Medical Cannabis Cooperative or Collective shall include, but shall not be limited to, the following information:

1. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the non-profit cooperative; this description should include whether delivery service will be provide and the extent of such service.
2. The address of the location from which the cooperative for which application is made will be operated;
3. A site plan and floor plan of the premises denoting all the use of areas on the premises, including storage, cultivation areas, exterior lighting, restrooms,

signage, and parking; other tenant spaces if the cooperative or collective is proposed for a multi-tenant building site.

4. A security plan including the following measures:
 - a. Security cameras shall be installed and maintained in good working condition, and used in an on-going manner with at least 120 continuous hours of digitally recorded documentation in a format approved by the City Manager. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the storage areas, cultivation areas, all doors and windows, and any other areas as determined by the City Manager
 - b. The lease/business space shall be alarmed with a reliable, commercial alarm system that is operated and monitored by a security company or alarm business that is operating in full compliance with Chapter 5.02 of this Code.
 - c. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of cooperative staff.
 - d. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.
 - e. All windows on the building that houses the cooperative or collective shall be appropriately secured and all marijuana securely stored.
5. The name and address of any person who is managing or responsible for the Medical Cannabis Cooperative or Collective's activities, and the names and addresses of any employees, if any, and a statement as to whether such person or persons has or have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received for such conviction(s).
6. The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a Medical Cannabis Cooperative or Collective will be operated on his/her property.
7. Authorization for the City Manager to seek verification of the information contained within the application.
8. Evidence that the cooperative or collective is organized as a bona fide non-profit cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients in strict accordance with the Compassionate Use Act.

9. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

10. Any such additional and further information as is deemed necessary by the City Manager to administer this Section.

H. The City Manager shall conduct a background check of any applicant for a regulatory permit, including any person who is managing or is otherwise responsible for the activities of the cooperative or collective, and any employee, and shall prepare a report on the acceptability of the applicant's background and the suitability of the proposed location. Upon completing the review process, the regulatory permit shall be deemed a qualified application subject to the final certification and approval by the City Council pursuant to the allotment process, unless the City Manager finds that the applicant:

1. Has made one or more false or misleading statements, or omissions on the application or during the application process; or

2. The proposed cooperative or collective is not allowed by state or local law, statute, ordinance, or regulation, including this Code, at a particular location.

3. Is not a Primary Caregiver or Qualified Patient or the legal representative of the cooperative or collective; or

4. The applicant, or any person who is managing or is otherwise responsible for the activities of the cooperative or collective, or any employee, if any, has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Compassionate Use Act. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

5. The applicant. Or any person who is managing or is otherwise responsible for the activities of the cooperative or collective has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

Based on the information set forth in the application and the City Manager's report, the City Manager, or the City Council pursuant to the allotment process, may impose reasonable terms and conditions on the proposed operations in addition to those specified in this Section. A regulatory permit issued pursuant to this Section is not transferable.

I. The City Manager will accept applications for Medical Cannabis Cooperatives or Collectives during a ninety (90) day period commencing on the effective date of this

Section. Such 90 day time period plus an additional 30 days to complete the reviews and the preparation of the reports called for in this Section shall be considered the "Application Period." In the event there is no more than one qualified application for each unallocated regulatory permit for a medical cannabis collective or cooperative as allowed under Subsection (F) determined to be conditionally qualified by the City Manager, the City Manager shall refer each such application to the City Council with a recommendation that the City Council approve the issuance of a regulatory permit to the applicants, subject to full compliance with the provisions of this Section and any conditions of approval. In the event there are more than one applications submitted for each unallocated regulatory permit for a medical cannabis collective or cooperative as allowed under Subsection (F) during the Application Period, the City Manager shall submit the qualified applications and the City Manager report on each application to the City Council for review and consideration. The qualified applications shall be considered concurrently by the City Council at a public hearing noticed and conducted pursuant to the provisions of Section 94.02.00 C of this Code. The City Council shall consider the qualified applications after evaluating the applications on their respective merits and the City Council may conditionally approve each qualified application or deny one or more of such applications if the Council makes one or more of the findings listed in Subsection H. The City Council shall rank all qualified applications in order of those that best satisfy the requirements of this Section and provide the highest level of service and opportunities for residents of Palm Springs. The highest ranked qualified applications equal to the number of available regulatory permits shall be granted regulatory permits pursuant to this Section.

J. The obligations of the Medical Cannabis Cooperative or Collective, including all on-going and continuing obligations required pursuant to any provision of this Section or as may be provided in any conditional approval of the City Manager or the City Council, shall be set forth in a covenant running with the land or the leasehold interest, approved as to form by the City Attorney, and enforceable by the City. Such covenant shall also provide that the cooperative or collective shall annually provide to the City Manager an updated application containing the information contained in Subsection G. To the fullest extent permitted by law, the City shall not assume any liability whatsoever, and expressly does not waive sovereign immunity, with respect to medical cannabis, or for the activities of any Medical Cannabis Cooperative or Collective. Upon receiving possession of a regulatory permit as provided in this Section, the collective or cooperative shall

1. Execute an agreement indemnifying the City;
2. Carry insurance in the amounts and of the types that are acceptable to the City Manager;
3. Name the City as an additionally insured.
4. Agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval.

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

K. No persons shall engage in, conduct, or be permitted to engage in or conduct a Medical Cannabis Cooperative or Collective (“cooperative”) unless each of the following requirements is continually met:

1. The cooperative or collective shall comply fully with all of the applicable restrictions and mandates set forth in state law, including without limitation the Attorney General Guidelines.

2. The cooperative shall only be open between the hours of 9:00 a.m. and 7:00 p.m., Monday through Saturday.

3. Physician's referrals shall be verified by the cooperative prior to inclusion into the cooperative and at least every six months thereafter.

4. Each member of the cooperative or collective shall be a patient or a qualified primary caregiver. The cooperative shall maintain patient records in a secure location within the City of Palm Springs, available to the City Manager to review upon demand. Such records shall include without limitation a copy of the physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by such primary caregiver.

5. Cannabis shall be kept in a secured manner during business and nonbusiness hours.

6. Each cooperative or collective that prepares, dispenses, or in any manner distributes food must comply with the provisions of all relevant State and local laws regarding the preparation, distribution, and sale of food.

7. No cooperative or collective shall conduct or engage in the commercial sale of any product, good, or service. All transactions between the cooperative or collective and its members or the members' primary caregivers shall be made by check or credit card; no cash transactions shall be allowed.

8. Any Medical Cannabis Cooperative or Collective must pay any applicable sales tax pursuant to federal, state, and local law.

9. On-site smoking, ingestion, or consumption of cannabis or alcohol shall be prohibited on the premises of the cooperative or collective. The term “premises” as used in this Subsection includes the actual building, as well as any accessory structures and parking areas. The building entrance to a cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting,

or consuming marijuana on the premises or in the vicinity of the cooperative or collective is prohibited.

10. Signage for the cooperative shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.

11. Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises. A cooperative or collective shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cooperative or collective.

12. Except as provided in Subsection G-4, windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

13. No one under 18 years of age shall be a member of a cooperative or a collective without written authorization of a parent or legal guardian.

14. Physician services shall not be provided on the premises. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site.

15. The building in which the cooperative or collective is located as well as the operations as conducted therein shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and the Compassionate Use Act.

16. The cooperative or collective shall not distribute, sell, dispense, or administer cannabis to anyone other than qualified patient members of the cooperative or collective and their primary caregivers.

17. A Medical Marijuana Cooperative or Collective shall distribute only cannabis cultivated on the premises or by a member of the cooperative or collective or the member's primary caregiver. The cooperative or collective shall do an inventory on the first business day of each month and shall record the total quantity of each form of cannabis on the premises. These records shall be maintained for two (2) years from the date created.

18. Provide the City Manager with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom one can provide notice if there are operating problems associated with the Cooperative. The Cooperative shall make every good faith effort to encourage residents to call this person to try to solve operating

problems, if any, before any calls or complaints are made to the police or planning departments.

19. Fully comply with and meet all operating criteria required pursuant to the Compassionate Use Act, state law, the Attorney General Guidelines, the provisions of this Section, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit, and all requirements set forth in the covenant as described in Subsection J, in order to ensure that the operation of the cooperative or collective is consistent with the protection of the health, safety, and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

L. Enforcement.

1. Recordings made by the security cameras shall be made available to the City Manager upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

2. The City Manager shall have the right to enter the Medical Cannabis Cooperative or Collective from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and State of California.

3. Operation of the cooperative or collective in non-compliance with any conditions of approval or standards of this Section shall constitute a violation of the Municipal Code and shall be enforced pursuant to the provisions of this Code.

4. The City Manager may revoke a medical cannabis regulatory permit if any of the following, singularly or in combination, occur:

- a. The City Manager determines that the cooperative or collective has failed to comply with any provision of this Code, any condition or approval, or any agreement or covenant as required pursuant to this Section; or
- b. Operations cease for more than 90 calendar days, including during change of ownership proceedings; or
- c. Ownership is changed without securing a regulatory permit; or
- d. The cooperative or collective fails to maintain 120 continuous hours of security recordings; or
- e. The cooperative or collective fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.

5. Any decision regarding the approval, conditional approval, denial, or revocation of a regulatory permit may be appealed to the City Council. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council amended from time to time, and a written, verified declaration setting forth the basis for the claim that the

permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of all regulatory permits until action is taken on the appeal.

M. In the event a qualified cooperative or collective that receives an allotment under Subsection I of this Section ceases to operate for any reason, the City Manager may or shall reopen the allotment process and provide an opportunity for new applications to be submitted. The time periods and process provided in Subsection I shall be applied to the review and consideration of applications and the allotment of a regulatory permit. The provisions of this Subsection shall not apply in those situations where the City Council has reviewed qualified applications within three (3) years of a previous Allotment Process and the City Council decides to limit its review to one or more qualified applications reviewed and considered during such previous Allotment Process.

Section 2. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, then the provisions of Section 1 through 3, inclusive, of this Ordinance shall be deemed invalid and unenforceable and the dispensing of cannabis for any reason in any zone shall be deemed a prohibited use under the City's Zoning Code. The City Council hereby declares that it would not have adopted this Ordinance if any of the sections or provisions thereof may be declared invalid or unconstitutional or contravened via legislation.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2012.

ATTEST:

STEPHEN P. POUQUET, MAYOR

JAMES THOMPSON, CITY CLERK

APPROVED AS TO FORM:

DOUGLAS HOLLAND, CITY ATTORNEY

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. 1804 is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Springs City Council on March 7, 2012, and adopted at a regular meeting of the City Council held on _____, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, CITY CLERK
City of Palm Springs, California