

PLANNING COMMISSION

AGENDA

REGULAR MEETING OF THE HEMET PLANNING COMMISSION
City Council Chambers
450 East Latham Avenue, Hemet CA 92543

February 1, 2011
6:00 PM

*If you wish to make a statement regarding any item on the agenda, please complete a Speaker Card and hand it to the clerk. When the Chairman calls for comments from the public on the item you wish to address, step forward to the lectern and state your name and address. **Only testimony given from the lectern will be heard by the Planning Commission and included in the record.***

1. CALL TO ORDER:

Roll Call: Chairman John Gifford, Vice Chairman Sharon Deuber, and Commissioners David Rogers and Chauncey Thompson.

Invocation and Flag Salute: Commissioner Chauncey Thompson

2. APPROVAL OF MINUTES:

A. Minutes for the Planning Commission Meeting of January 18, 2011

3. PUBLIC COMMENTS:

*Anyone who wishes to address the Commission regarding items **not on the agenda** may do so at this time. Please line up at the lectern when the Chairman asks if there are any communications from the public. When you are recognized, please give your name and address. Please complete a Speaker Card and hand it to the Clerk so that we have an accurate recording of your name and address for the minutes.*

□ CITY OF HEMET PLANNING COMMISSION MEETING □
FEBRUARY 1, 2011

PUBLIC HEARING ITEMS

Meeting Procedure for Public Hearing Items:

1. Receive Staff Report Presentation
2. Commissioners Report Regarding Any Site Visit or Applicant Contact
3. Open the Public Hearing and receive comments from the applicant and the public.
4. Close the Public Hearing
5. Planning Commission Discussion and Motion

4. ZONING ORDINANCE AMENDMENT NO. 11-001 (MEDICAL MARIJUANA DISPENSARIES)

Location: City-wide

Planner: Deanna Elliano, Community Development Director – (951) 765-2375

Description: A city-initiated ordinance of the City of Hemet adding Section 90-79 to Article III of Chapter 90 (Zoning) of the Hemet Municipal Code, prohibiting the establishment and operation of medical marijuana dispensaries within the City of Hemet.

Recommended Action:

That the Planning Commission adopt Resolution Bill No. 11-004 recommending to the City Council the approval of Zoning Ordinance Amendment 11-001 and adoption of Ordinance Bill No. 11-004, entitled:

“A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HEMET, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ADDING SECTION 90-79 TO ARTICLE III OF CHAPTER 90 (ZONING) TO THE HEMET MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY”

DEPARTMENT REPORTS

5. **UPDATE REPORT REGARDING PROPOSED AMENDMENTS TO THE ZONING REGULATIONS FOR DOWNTOWN HEMET-** *Verbal report by City Planner Ron Running*
6. **2010 CALIFORNIA GREEN BUILDING CODE REPORT-** *Power-point presentation by City Planner Ron Running*
7. **COMMUNITY DEVELOPMENT DIRECTOR REPORTS:**
 - A. Report on City Council Actions from the January 25, 2011 meeting
 - B. Interim Shopping Cart Abatement Program

8. CITY ATTORNEY REPORTS:

Verbal reports from Assistant City Attorney Tom Jex on items of interest to the Planning Commission

9. PLANNING COMMISSIONER REPORTS:

- A. Chairman Gifford
- B. Vice Chairman Deuber
- C. Co mmissioner Rogers
- D. Co mmissioner Thompson

10. FUTURE AGENDA ITEMS:

- A. CEQA Overview and CEQA Guidelines Update
- B. SB 375 and AB 32 Implementation Update
- C. Tres Cerritos Specific Plan Amendment
- D. Downtown Zoning Ordinance Amendment & Design Guidelines

11. ADJOURNMENT: To the regular meeting of the City of Hemet Planning Commission scheduled for **February 15, 2011 at 6:00 p.m.** to be held at the City of Hemet Council Chambers located at 450 E. Latham Avenue, Hemet, California 92543.

NOTICE TO THE PUBLIC:

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the Planning Department counter of City Hall located at 445 E. Florida Avenue during normal business hours. Agendas for Planning Commission meetings are posted at least 72 hours prior to the meeting.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate I the meeting, please contact the Planning Department office at (951) 765-2375. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to insure accessibility to the meeting. (28 CFR 35.102-35.104 ADA Title II).

AGENDA #2A

PLANNING COMMISSION

MEETING MINUTES

DATE: January 18, 2010

CALLED TO ORDER: 6:00 P.M.

MEETING LOCATION: City Council Chambers
450 East Latham Avenue, Hemet, CA 92543

1. CALL TO ORDER:

Roll Call: Vice Chairman John Gifford, and Commissioners Sharon Deuber, David Rogers and Chauncey Thompson.

2. APPROVAL OF MINUTES:

A. Minutes of the Planning Commission Meeting of December 7, 2010

It was **MOVED** by Commissioner Deuber and **SECONDED** by Commissioner Rogers to approve the minutes.

The **MOTION** was carried by the following vote:

AYES: Vice Chairman Gifford, Commissioners Deuber, Rogers and Thompson

NOES: None

3. ELECTION OF CHAIRMAN AND VICE CHAIRMAN OF THE PLANNING COMMISSION

A. CDD Elliano called for nominations for Planning Commission Chairman, as former Chairman Smith had been elected to the City Council.

It was **MOVED** by Commissioner Deuber and **SECONDED** by Commissioner Rogers to elect Vice Chairman John Gifford as Planning Commission Chairman.

The **MOTION** was carried by the following vote:

AYES: Commissioners Deuber, Rogers and Thompson

NOES: None

1 B. CDD Elliano called for nominations for Planning Commission Vice Chairman.

2
3 It was **MOVED** by Commissioner Rogers with no **SECOND** to elect Commissioner Sharon
4 Deuber as Planning Commission Vice Chairperson. (The City Attorney had advised that
5 no "Second" was necessary).

6
7 The **MOTION** was carried by the following vote:

8
9 **AYES:** Chairman Gifford, Commissioners Rogers and Thompson

10 **NOES:** None

11
12 (Brief recess to allow reorganization of the Commission)

13
14 **4. PUBLIC COMMENTS: (None)**

15
16
17 **WORK STUDY ITEM**

18
19
20
21
22 **5. WORK STUDY SESSION REGARDING A CONDITIONAL USE PERMIT TO**
23 **OPERATE A SKATE PARK AT THE PROMISE CHURCH (northwest**
24 **corner of Menlo Avenue and Garfield Street.)**

25
26 **Applicant:** The Promise Church

27 **Location:** 2010 West Menlo Avenue

28 **Planner:** Soledad Carrisoza, Planning Technician

29 **Description:** A work study session to allow the Planning Commission to review
30 and provide input regarding a proposed conditional use permit for the construction
31 and operation of a 25,200 square-foot outdoor skate park at an existing church site
32 located on the northwest corner of Menlo Avenue and Garfield Street.

33
34 **Recommended Action:**

35 Discussion and possible direction to staff regarding the proposed project

36
37
38 Planner Carrisoza presented the Work Study Power Point presentation regarding
39 Conditional Use Permit 10-001, indicating the location is the Promise Church, agent
40 Eldon Stephenson, with zoning as S-1. She outlined the description of the park, the
41 operating plans, wrought-iron fencing and six light post locations. She also enumerated
42 some of the concerns from the police and fire departments, as well as those expressed by
43 surrounding concerned neighbors.

44
45 Chairman Gifford outlined the process for a work study, indicating questions from
46 Commissioners and later, public comments. He began by asking questions about the
47 temporary permit, the length of time needed for that temporary permit to remain, and
48 whether the city had an ordinance regarding skateboard use on public sidewalks and
49 streets.
50

1 CDD Elliano stated she was not sure about an ordinance, but that ordinarily
2 skateboarding is not allowed on public sidewalks. Planner Carrisoza also stated she did
3 not know how long the applicant was requesting an extension of the TUP, but that the
4 residents were complaining that the traverse from the park to skaters' homes was part of
5 what was disrupting the neighborhood.
6

7 Chairman Gifford also asked if the use of loudspeakers was also something that took
8 place over the summer, and Planner Carrisoza responded that loudspeakers were not
9 indicated in the TUP, and CDD Elliano reiterated that they were not aware there was
10 going to be loudspeaker use, and that is something that they would want to condition in
11 the CUP.
12

13 Vice Chair Deuber stated she had visited the site and also had spoken to the applicant.
14 Commissioners Rogers and Thompson had also visited the site, as had Chairman Gifford.
15

16 Vice Chair Deuber asked for clarification about site distance from homes, and when
17 Planner Carrisoza indicated she did not have those measurements, Chairman Gifford
18 asked staff to provide that information at the future public hearing
19

20 Commissioner Thompson asked how many skate parks the city has, and Planner
21 Carrisoza stated there were none. He also stated that the present site does not look safe,
22 but Planner Carrisoza indicated the park has not been used since September of 2009.
23

24 Chairman Gifford opened the public hearing portion and asked the applicant to approach
25 the lectern.
26

27
28 Eldon Stephenson, 28061 Patty Lane, Romoland, who works at 2010 West Menlo,
29 indicated the church's intent was not to create a fireball in the community but to become a
30 resource for the community. He stated the proposal is using 7.2 percent of the current
31 property for a skate park, but they are looking to create a large park-like setting on the
32 church's property with other areas of recreation. He indicated that in the packet the
33 church had provided, they had given research that addresses several of the issues
34 brought up, such as property values, and included a journal of adolescent research done
35 by Search Institute which outlined 40 developmental assets, including such things as
36 caring community, teaching children respect, etc., that actually reverses such activity of
37 youth as gang violence, drugs, sexual promiscuity, alcohol use.
38

39 Mr. Stephenson also mentioned that 24.5 percent of the people that used the skate park
40 when it was open were adults, with families sitting on the grass to watch the skaters, that
41 50 percent of the skaters were between the ages of 11 and 18, with 10 percent between
42 the ages of 5 and 10. The most ideal time for skaters was between 10 a.m. and 2 p.m.,
43 with 3 p.m. to 6 p.m. also available.
44

45
46 The lighting proposed would make it easy for law enforcement to identify if someone were
47 in the park that shouldn't be there or if the ramps were in use during a time when they
48 should be closed. He then said he had much more information, but would wait for specific
49 questions, to be more efficient.
50

1 Chairman Gifford asked if they were requesting a continuance of the temporary permit
2 until the permanent facility is built.

3
4 Mr. Stephenson guessed that in somewhere between 6 to 10 months they would be able
5 to have the new facility working. In answer to Chairman Gifford's question about their
6 management of loitering issues, Mr. Stephenson stated that with the temporary facility,
7 they did not have specific hours of operation. With the new park in place, they would have
8 specific hours when the park would be open, the supervision would be in place, and if
9 loitering or other undesirable activity were encountered, the skaters would lose their
10 privileges because this is a semi-private park, not a public park.

11
12 Chairman Gifford asked about noise abatement or the use of loudspeakers and music.

13
14 Mr. Stephenson said that with the move of the permanent facility to a different site on the
15 property, they would be farther away from residential and closer to commercial zoning. He
16 also stated that when a complaint had been made relating to noise and the police had
17 arrived, they assured him the noise level was well beneath the noise regulation.

18
19 Chairman Gifford's last question was "Why a skate park?"

20
21 Mr. Stephenson responded that it was a sport, now very popular with adults and children,
22 which was an individual sport rather than a team sport and appealed to many youth who
23 were not "team players," who may not have social networks that make team sports
24 comfortable for them. This outlet would help them become productive, respectful and
25 compliant to society's standards rather than rebellious.

26
27 Vice Chair Deuber commended Mr. Stephenson and stated she thought it was a
28 phenomenal concept. She indicated she was one of those skater kids as a youngster and
29 asked about the numbers of skaters at the temporary site and what their projections were
30 for the larger site.

31
32 Mr. Stephenson said for three months of operation, 265 skaters participated, with maybe
33 40 to 50 participants during events. Law enforcement suggested a ratio of one adult
34 supervisor to 10 children, which with the expanded park size accommodating 150
35 children, would require 15 adult supervisors. He also commented on the numbers of
36 grandparents, relatives and family that would come to watch the children skating, and how
37 that developed and strengthened families. He didn't feel that getting adult supervision
38 would be a problem, as many were volunteering to help. He stated that the church had
39 been at that location for 32 years.

40
41 Commissioner Rogers commended the church for trying to propose this. But he also was
42 concerned about noise, lighting, and loitering. He asked what the church proposed for
43 maintaining a crowd of 150, a number he thought was more than possible to appear.

44
45 The applicant responded that they plan on having a gate through which the participants
46 would pass, with landscaping, benches, trees and other activities, as well as a shed. The
47 concessions would be primarily rehydrating drinks to cut down on cleanup. If 150 showed
48 up for an event, they could accommodate 40 at a time, with three and a half turnarounds,
49 which would mean each skater would have skate time for 15-20 minutes every hour. If
50

1 loitering or other behavioral issues became a problem, privileges could be revoked. If
2 numbers are above what the park could accommodate, a first-come, first-served system
3 could be inaugurated by keeping track of I.D. badges.
4

5 Commissioner Rogers asked about the size of the congregation, and the applicant
6 responded between 140 and 170 active parishioners, with between 120 to 130
7 participants in the younger service and 40 to 50 in the traditional service. When asked
8 about other activities on the church grounds, Mr. Stephenson replied that they have up to
9 200 or 300 people there for a "mud bowl," or football in the mud, as well as movies for
10 three or four hours at a time, with no call to law enforcement or parking issues.
11

12 Vice Chair Deuber asked if the temporary park would be dismantled and returned to
13 parking lot space within the six to ten months, and the applicant concurred.
14

15 Commissioner Rogers asked if the church would consider installing video cameras on the
16 property, as well as other measures to reduce noise, trash, etc. And the applicant
17 indicated their willingness to do so, as well as conform to any conditions the city wished to
18 impose. He went a step further and stated that part of the plan is not just operating a
19 skate park, but it's impacting the youth of the community, developing leadership,
20 responsibility, and reaching out to others. He reiterated that the park is basically a slab of
21 concrete with wooden ramps, the biggest of which is five feet.
22

23 Commissioner Thompson mentioned that if there were problems with loiterers, they could
24 work with the City to address those kinds of issues. He stated he felt that the skaters
25 would be in a safe environment with supervision rather than jumping off the ramps behind
26 Marshall's and other places throughout the city.
27

28 Chairman Gifford requested the public to approach the lectern when he called their names
29 from the sign-up cards.
30

31 Greg Dinsmore (no address given), stated he has lived in the valley 21 years and works
32 for the county government in the mental health department, serving mental health kids,
33 social service kids, and 602 probation kids. He stated that for a community concerned
34 with violence, teen pregnancy, theft, etc., to be proactive means providing kids with
35 venues where they can be safe, meet law-abiding citizens with good values, and change
36 their life's direction. He mentioned several skate parks that are no longer in existence, but
37 that this park is a way to speak to kids' lives. He indicated the citizenry cannot put their
38 heads in a hole and hope the kids are going to go away, but must be supportive in
39 providing opportunities for kids to take the right track.
40

41 Bobby Hicks, 2005 Aspen Drive, Hemet, a former Hemet Planning Commissioner for six
42 years, indicated that there are no other skate parks in the valley and that the surrounding
43 neighborhood is suffering from NIMBY syndrome. He suggested another town hall
44 meeting to discuss the issues with the neighbors.
45

46 Vicki Hicks, 1951 Fruitvale Avenue, Hemet, stated that she had sent a letter to the
47 Planning Department outlining the problems the neighborhood has been facing, such as
48 graffiti, increased gang activity, trespassing, noise from dogs barking because of added
49 disturbance. She stated that the noise ordinance No. 10-39 has not been enforced.
50

1 Carl Petite, 27430 Columbia Street, Hemet, owner and president of Columbia Water
2 Gardens, a business which installs koi ponds and maintains them, stated he has been a
3 resident in the valley for 15 years and has a 20-year-old son who was a skateboarder,
4 and the activity helped to make him a productive and respectful member of the
5 community. He urged the neighbors to remember that it takes a community to raise a
6 child. He believes that the neighbors can be productive partners in the adoption of the
7 skate park.
8

9 Carl Simonelli, 2163 Foxmoor Court, Hemet, whose address is less than 1,000 feet from
10 the proposed park, pointed out the increase of vandalism and violence around skate parks
11 in many cities. He also felt that if the city wanted a skate park, the city should be the
12 responsible party, not a church, and not in the midst of a retirement community. He
13 proposed art classes, basketball courts, but not a skate park because it brings violence.
14

15 Stella Johnson, 620 San Pasqual Street, Hemet, part of Valle Hermosa senior adult
16 community, felt that having the park so close to a senior community showed disrespect for
17 seniors with issues such as failing health. She felt that skateboarding was not going to
18 change a child's life, and that security after hours would be lacking, thus causing more
19 stress and fright within the community.
20

21 Darcee Ellefson, 26470 Paradise Cove, Hemet, a third-generation valley resident, felt that
22 creating a park-like setting would reduce noise and sight distractions and would be a
23 positive influence on today's youth. She indicated what concerned individuals did for her
24 in her youth, and how important she felt it was to do the same for young people today.
25 She understood the residents' concerns and felt another town hall meeting would be
26 beneficial, where she could bring in data concerning property values, etc.
27
28

29 Sharyn Lind, 764 Garfield Street, Hemet, lives across from the temporary skateboard park
30 and hears the noise and has seen kids jumping the fence and skating at 11:30 at night.
31 She felt that the church was not an appropriate place to have the park, suggesting that the
32 Wheel House wants to do a skateboard park, which site would be more appropriate.
33

34 Michelle Petite, 27430 Columbia Street, Hemet, a church member, wanted to remind the
35 audience that the church is only asking for 15 hours a week of active skateboard park time
36 during daylight hours.
37

38 Jerry Witt, 44745 Cornish Avenue, Hemet, a senior member of the church, said his group
39 is available to help with the park.
40

41 Sharon McComb, 1964 Florez Street, Hemet, a resident of Valle Hermosa, commended
42 the church on its goals, but stated that the noise and the vandalism to residents' fencing
43 they already experienced from concerts at the church and children going to and from
44 school make living to the south of the proposed park very difficult.
45
46

47 Paul Case, 154 North Meridian, Hemet, is the administrative media manager for the
48 church and does the scheduling of events. He stated that in the past year and a half, the
49 church has held zero concerts, so if there is music being played; it is not from the church
50 property.

1 Connie Carlton, 1931 West Fruitvale Avenue, Hemet, lives within 1,000 feet of the skate
2 park. She stated her concern is that if kids are evicted from the park, they will be evicted
3 onto streets around her house.
4

5 Ruby Young, 575 South Lyon, Hemet, lives in a mobile home park community and is a
6 member of the church. She felt that having the children in a supervised skate park was
7 preferable to having them in the mall and on the streets skateboarding and vandalizing.
8 She commended Pastor Eldon Stephenson, a Canadian, for his efforts at bringing in
9 young people into the church and hoped he would never leave.
10

11 Chairman Gifford closed the public portion of the work study session, reminding the
12 audience that this subject would likely be coming back to the Planning Commission and
13 that they would have further opportunity to speak. He commended the speakers for their
14 participation in community concerns, and informed them that the Commissioners would
15 now outline for staff some of the issues they would like to have examined.
16

17 Chairman Gifford noted four concerns on which he wanted further information: 1) A
18 security plan that guarantees how those issues would be taken care of; 2) A set schedule
19 for the park and solution of parking issues; 3) A supervision plan that outlines numbers of
20 participants allowed and amount of supervision needed; 4) Facilitation of another town
21 hall meeting to address community concerns and possible agreement.
22

23 Vice Chair Deuber agreed with Chairman Gifford's concerns, but commended the church
24 on their willingness to provide a sanctuary for the children of the community. She
25 encouraged representatives of the church to get out in the community to address the fears
26 elucidated by the speakers and asked community members to put their views in writing so
27 the Commission has written documentation, both pro and con.
28

29 Commissioner Rogers commended the church and thanked the citizens for coming
30 forward with their concerns. He reiterated his concerns regarding security and the need
31 for cameras.
32

33 Commissioner Thompson said he was in favor of a town hall meeting and requested of
34 the applicant a map that shows the whole park with all available amenities. He also
35 acknowledged that the city is in a budget crunch, but that there is fire, police, ambulance
36 and enforcement services available from the city, as well as volunteer services.
37
38

39
40 (Ten-minute recess taken.)
41
42

43
44 **6. CONDITIONAL USE PERMIT 10-010 (T-MOBILE AT GENESIS**
45 **CONSTRUCTION)**
46

47 **Owner:** Genesis Construction
48 **Applicant:** T-Mobile West Corporation
49 **Agent:** Alexis Osborn - Pacific Telecom Services
50 **Location:** 170 East Oakland Avenue
Planner: Carole Kendrick, Assistant Planner

1 **Description:** A request for Planning Commission review and approval of a
2 Conditional Use Permit allowing the construction and operation of a major ground-
3 mounted telecommunication facility and associated equipment consisting of a 55'
4 pole camouflaged as a monopalm, with an environmental exemption pursuant to
5 CEQA Guidelines Section 15332
6

7 **Recommended Action:**

8 ***Adopt Planning Commission Resolution Bill No. 11-003 approving CUP-10-002***
9 ***and direct staff to file a Notice of Exemption pursuant to Section 15332 of the CEQA***
10 ***Guidelines:***
11

12 "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
13 HEMET, CALIFORNIA APPROVING CONDITIONAL USE PERMIT NO. 10-
14 002 FOR A MAJOR TELECOMMUNICATIONS FACILITY CONSISTING OF A
15 GROUND-MOUNTED FIFTY-FIVE (55) FOOT HIGH MONOPALM WITH
16 ACCESSORY EQUIPMENT LOCATED AT 170 EAST OAKLAND AVENUE
17 (APN: 443-060-016)."
18

19
20 Planner Kendrick presented the staff report, with visuals, and pointed out the alternative
21 sites proposed by the applicant. She further explained that the site is adjacent to the
22 railroad, which is going to be where the future Metrolink will be going through, so staff has
23 conditioned that the pole be provided on a moveable foundation system, which is a cell
24 block foundation.
25

26 She also stated that there had been three letters in opposition, based on health issues
27 posed by radio frequency signals, property values, and impact on future development, but
28 that the FCC does have regulations that govern land use decisions regarding wireless
29 service facilities, preempting the city from denying a project based on the environmental
30 effects of radio frequency emissions as long as the project is consistent with and
31 compliant with the FCC's radio frequency rules.
32

33 Staff does recommend the adoption of Planning Commission Resolution Bill No. 11-003.
34

35 Chairman Gifford asked how far from the daycare facility the site would be, and Planner
36 Kendrick estimated within 200 feet. He also wondered if any of the seven alternative sites
37 would be acceptable. Planner Kendrick stated this was the preferred location for T-
38 Mobile, there were several which were acceptable, but the rest either had unwilling
39 property owners or they didn't meet the RF engineer's requirement for the gap in
40 coverage.
41

42 Chairman Gifford asked if it might be possible to move the monopalm farther to the north
43 on the same property so it would be at least 200 feet away from the daycare facility.
44

45 Vice Chair Deuber asked if the site would interfere with the proposed general plan uses or
46 the development of the property, and CDD Elliano said there is nothing in the general plan
47 or with the cell tower that would interfere with the future development of that property.
48
49
50

1 Commissioner Thompson asked if there is a house on the property owned by the writer of
2 the second letter, and Planner Kendrick said the property is vacant and commercially
3 zoned.
4

5 Chairman Gifford opened the public hearing and asked the applicant to approach the
6 lectern.
7

8 Alexis Osborn, 3199 Airport Loop Drive, Costa Mesa, thanked Planner Kendrick for her
9 report. She stated that the site is the preferred site for T-Mobile, as it has a gap coverage
10 of 88 percent, and all the other alternative sites reduce the gap coverage to from 75
11 percent to 54 percent. Also, they could not co-locate on the adjacent AT&T slim pole
12 because no other antennas can fit inside the pole. They would, however, be willing to
13 move the proposed T-Mobile pole further north because the pole is on cell blocks and it
14 shouldn't affect their coverage.
15

16
17 Chairman Gifford asked Ms. Osborn if T-Mobile was amenable to the conditions already
18 imposed, and Ms. Osborn said they had read through the conditions and are agreeable to
19 them.
20

21 Planner Kendrick stated she thought the pole was 200 feet from the property line of the
22 daycare center already, but that they would make that a condition of the CUP.
23

24 It was **MOVED** by Vice Chair Deuber and **SECONDED** by Commissioner Thompson to
25 **ADOPT** Planning Commission Resolution Bill No. 11- 003, approving the conditional use
26 permit 10-002, with the accommodation of moving the tower further north to a distance of
27 200 feet away from the Bridges Daycare Center, and adding to Condition No. 4 the
28 following language: "The project site shall be developed in accordance with the approved
29 plans and the conditions contained herein, provided that the cell site shall be located a
30 minimum of 200 feet from the closest property line of the adjacent daycare center."
31

32 The **MOTION** was carried by the following vote:
33

34 **AYES:** Chairman Gifford, Vice Chair Deuber, Commissioners Rogers and Thompson
35 **NOES:** None
36
37

DEPARTMENT REPORTS

7. COMMUNITY DEVELOPMENT DIRECTOR REPORTS:

A. Report on City Council Actions from the December 14, 2010, and January 11, 2011 meetings

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44
45 CDD Elliano stated there was discussion, and at the next meeting adoption, of a series of
46 building codes, the 2010 California Building Codes, residential building codes, the Cal
47 Green Code, the Star Building Code, as well as different fire codes and uniform fire codes.
48
49
50

1 There was also a preliminary review of the proposal for the fire-damaged building at
2 Carmelita and Florida Avenues, with discussion about the parking concerns, and a
3 request that applicant and architect be flexible with the space, asking that they consider
4 the opportunity to develop entertainment uses or restaurants. There will need to be some
5 amendments to the Downtown Hub of the Valley Ordinance, which will be coming back to
6 the Planning Commission in the near future.
7

8 **8. CITY ATTORNEY REPORTS:** (None)
9

10 **9. PLANNING COMMISSIONER REPORTS:** (None)
11

12 **10. FUTURE AGENDA ITEMS:**
13

- 14 A. Work Study regarding the 2010 California Building Code, if there is a light enough
15 agenda.
- 16 B. Work Study regarding CEQA Overview and Guidelines Update and a CEQA 101
17 by City Attorney Jex when a new Commissioner is in place.
- 18 C. Zoning Ordinance Amendment regarding Medical Marijuana Dispensaries
19 because the present urgency ordinance will expire April 23, so a permanent
20 ordinance needs to be adopted at the next meeting.
- 21 D. Zoning Ordinance Amendment regarding Downtown development standards.
- 22 E. Conditional Use Permit for Shooters Billiards and Restaurant in the old
23 bank/furniture store on Florida. It will cater to billiards leagues and clubs.
24 Because of needed upgrades to the building because of occupancy changes,
25 such as fire sprinklers, the owners are weighing their costs and ability move
26 forward with the project.
27
28

29 **16. ADJOURNMENT** to the regular meeting of the City of Hemet Planning
30 Commission scheduled for **February 1, 2011 at 6:00 p.m.** to be held at the City of
31 Hemet Council Chambers located at 450 E. Latham Avenue, Hemet, California 92543.
32
33
34
35

36 _____
37 John Gifford, Chairman
38 Hemet Planning Commission

39 ATTEST:

40 _____
41 Nancie Shaw, Records Secretary
42 Hemet Planning Commission
43
44
45
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AGENDA #4



Staff Report

TO: Honorable Chairman and Members of the Planning Commission

FROM: Deanna Elliano, Community Development Director
Thomas D. Jex, Assistant City Attorney

DATE: February 1, 2011

RE: **ZONING ORDINANCE AMENDMENT 11-004 Regarding Medical Marijuana Dispensaries (City of Hemet)**

Location: City-wide

Planner: Deanna Elliano, Community Development Director – (951) 765-2375

Description: A city-initiated ordinance of the City of Hemet adding Section 90-79 to Article III of chapter 90 (Zoning) of the Hemet Municipal Code, prohibiting the establishment and operation of medical marijuana dispensaries within the City of Hemet.

STAFF RECOMMENDATION

The Planning Department recommends that the Planning Commission:

- 1. Adopt Planning Commission Resolution Bill No. 11-004, APPROVING ZOA-11-001, and entitled as follows:**

“A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HEMET, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ADDING SECTION 90-79 TO ARTICLE III OF CHAPTER 90 (ZONING) TO THE HEMET MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY”

BACKGROUND

At the City Council meeting of April 28, 2009, and after hearing and considering public testimony, the City Council adopted Ordinance 1812 establishing an interim urgency ordinance prohibiting Medical Marijuana dispensaries for a period of forty-five days. As the Government Code allows the City to extend Ordinance 1812 for a period of 10 months and 15 days, the City Council did so

at its meeting of June 9, 2009 by adopting Ordinance No. 1813 after hearing and considering further public testimony. Thus, Ordinance No. 1813 was made valid until April 24, 2010.

The Government Code allowed the City Council one final extension to the interim urgency ordinance prohibiting Medical Marijuana Dispensaries for the period of one year. On February 23, 2010, the City Council adopted its last and final extension of the urgency ordinance prohibiting Medical Marijuana Dispensaries by adopting Ordinance No. 1825. This final extension is set to expire on April 23, 2011. The proposed ordinance will replace the prior urgency ordinance and establish an ongoing prohibition on Medical Marijuana Dispensaries within the City of Hemet.

ANALYSIS:

The Compassionate Use Act of 1996 (the "CUA"), adopted by the voters as Proposition 215, provided "qualified patients" and "primary caregivers" who possess and/or cultivate marijuana with immunity from prosecution under specific criminal statutes. In the ensuing years following its passage, the CUA generated significant confusion regarding a number of issues related to the use and distribution of medical marijuana. In 2003, the Legislature enacted a follow-up statute known as the Medical Marijuana Program Act of 2003 (the "MMPA"). The MMPA, among other things, stated that qualified patients and primary caregivers who associate within the State of California in order, collectively or cooperatively, to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under specific state statutes. This language regarding the collective or cooperative cultivation of medical marijuana has created further confusion and ongoing litigation on the extent to which a public agency may regulate or prohibit storefront medical marijuana dispensaries.

Thus far, the appellate courts have not decided a case involving an express ban on medical marijuana dispensaries. However, in *City of Corona v. Naulls* (2008) and *City of Claremont v. Kruse* (2009), appellate courts upheld the application of municipal zoning regulations against medical marijuana dispensaries and affirmed permanent zoning schemes, under which any land use that was not expressly permitted or conditionally permitted was deemed prohibited. Medical marijuana dispensaries were not listed specifically in either city's zoning code; therefore, the operation of a medical marijuana dispensary was a zoning violation, a nuisance per se, and subject to injunction.

In *Qualified Patients Association v. City of Anaheim* (2010), a medical marijuana dispensary operator challenged Anaheim's expressly-stated ban on medical marijuana dispensaries, which also imposed criminal penalties on operators. The trial court dismissed the suit on multiple grounds, including the ground that federal law preempted the CUA and MMPA. The Court of Appeal did not decide the issue of whether the City's ordinance was permissible under the MMPA, but the opinion suggested that the legality of such an express ban was an open question. Dispensary operators have cited this language in numerous trial court cases to support their

position that cities cannot ban dispensaries completely. For the most part, trial courts across the State continue to rule in favor of the cities in these cases.

Naulls and *Kruse* remain the only controlling appellate cases on the scope of permissible regulation of storefront medical marijuana dispensaries. Although these cases clearly favor a city's ability to ban dispensaries, the exact scope of municipal regulation of medical marijuana continues to be the subject of litigation and debate. Further appellate court guidance or State or Federal Legislation will be needed to fully resolve this issue. Although appellate courts have not decided directly whether an expressly-stated "blanket ban" is consistent with the MMPA, there is precedent at the trial court level upholding such a regulation. For example, a Judge in Riverside Superior Court recently granted the City of Wildomar's preliminary injunction to shut down a medical marijuana dispensary that opened in violation of the city's ordinance which prohibits dispensaries in all zones of the city.

PROPOSED ORDINANCE PROHIBITING MEDICAL MARIJUANA DISPENSARIES

The proposed ordinance expressly prohibits medical marijuana dispensaries, either fixed or mobile, in all zones of the City. Further, medical marijuana dispensaries may not be established or operated - which is defined to also include the conversion of an existing business, or the addition of a medical marijuana dispensary to an existing use. The City will not issue any kind of permit, business license or any other applicable approval for a medical marijuana dispensary. The ordinance also makes it unlawful for property owners to lease their property or building for this purpose. Any violation of this ordinance will be a public nuisance and the City may initiate an action for injunctive relief.

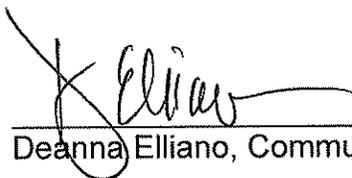
The term "medical marijuana dispensary" is defined in such a way as to ensure that the ban does not prohibit a *qualified patient's* ability to possess, cultivate, or use medical marijuana *in his or her own residence* or to prohibit a primary caregiver from providing medical marijuana to his or her qualified patient, as currently defined by and consistent with existing State law. In addition, certain State licensed health care facilities are specifically excluded from the provisions of the ordinance.

RECOMMENDED ACTION:

Since the adoption of the Interim Urgency Ordinance which established the moratorium in April, 2009; staff and the City Attorney's office have been closely following this issue in terms of related court cases and the experiences of a number of local agencies throughout southern California. In November of 2010, there was a statewide ballot measure (Proposition 19) that sought to legalize the use of marijuana, but was clearly defeated by the voters. While the intention of the Compassionate Use Act may have been to assist seriously ill patients, cities and counties have found that it has been greatly abused and that drug traffickers are posing as "caregivers" to sell illegal drugs to the general public, many of whom are minors. Law enforcement officials have

seen a substantial increase in crime in areas where dispensaries are operating, including robberies, murder, drug dealing, substance abuse, organized crime, and money laundering. The majority of these establishments also employ guards with firearms, posing a further risk to the health and safety of our citizens. In addition to the demonstrated impacts to health and safety related to the operation of these establishments, the courts are still sorting out many of the issues and uncertainties surrounding the current legislation, not the least of which is how state law dovetails with federal law concerning the use and distribution of marijuana. For these reasons, and as further elaborated in the draft Ordinance (see Exhibit 1A), staff recommends the adoption of the proposed Ordinance which prohibits the establishment and operation of medical marijuana dispensaries in all zones within the City of Hemet.

Respectfully submitted;



Deanna Elliano, Community Development Director

ATTACHMENTS:

1. Planning Commission Resolution Bill No. 11-004
Exhibit A – Proposed City Council Ordinance Bill No. 11-004 adding Section 90-79 to Chapter 90 of the Hemet Municipal Code

Attachment No. 1

Resolution Bill No. 11-004

**Planning Commission
Meeting of
February 1, 2011**



**CITY OF HEMET
Hemet, California**

**PLANNING COMMISSION
RESOLUTION BILL NO. 11-004**

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF HEMET, CALIFORNIA RECOMMENDING
THAT THE CITY COUNCIL ADOPT AN ORDINANCE
ADDING SECTION 90-79 TO ARTICLE III OF CHAPTER
90 (ZONING) TO THE HEMET MUNICIPAL CODE
PROHIBITING THE ESTABLISHMENT AND OPERATION
OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY**

WHEREAS, pursuant to Government Code Sections 65854 and 65855, the Planning Commission has the authority to review and make recommendations to the City Council regarding amendments to the City's zoning ordinances;

WHEREAS, on January 21, 2011, the City gave public notice by publishing notice in the Press Enterprise of the holding of a public hearing at which the amendment to the City's zoning ordinances would be considered; and

WHEREAS, on February 1, 2011 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed amendment to the City's zoning ordinance and at which the Planning Commission considered the proposed amendment to the City's zoning ordinance; and

WHEREAS, the Community Development Director has evaluated the zone text amendment for compliance with the California Environmental Quality Act (CEQA) and has determined that this action is exempt from CEQA under CEQA Guidelines section 1506(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**Planning Commission Resolution Bill No. 11-004
ZONING ORINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPENSARIES**

1 **NOW, THEREFORE**, the Planning Commission of the City of Hemet does
2 Resolve, Determine, Find and Order as follows:

3 **SECTION 1. ENVIRONMENTAL FINDINGS.**

4 The Planning Commission, in light of the whole record before it, including but not limited
5 to, the City's Local CEQA Guidelines and Thresholds of Significance, the
6 recommendation of the Community Development Director as provided in the Staff
7 Report dated February 1, 2011 and documents incorporated therein by reference, and
8 any other evidence (within the meaning of Public Resources Code § 21080(e) and §
9 21082.2) within the record or provided at the public hearing of this matter, hereby finds
10 and determines as follows:

- 11 (a) **CEQA**: The proposed zoning ordinance amendment is in compliance with the
12 requirements of the California Environmental Quality Act ("CEQA"), in that it is
13 not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result
14 in a direct or reasonably foreseeable indirect physical change in the environment)
15 and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the
16 CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it
17 has no potential for resulting in a physical change to the environment, directly or
18 indirectly.

19 **SECTION 2. ZONING ORDINANCE AMENDMENT FINDINGS**

20 According to Hemet Municipal Code section 90-41.5(a), the Planning Commission
21 makes the following findings with respect to this zoning ordinance amendment:

- 22 1. *That the zoning ordinance amendment is in conformance with the latest adopted
23 general plan for the city.*

24 The zoning ordinance is in conformance with the latest adopted general plan for the City
25 in that prohibiting medical marijuana dispensaries does not conflict with any allowable
26 uses in the land use element and does not conflict with any policies or programs in any
27 other element of the general plan.

- 28 2. *That the zoning ordinance amendment will protect the public health, safety and
welfare.*

 The zoning ordinance will protect the public health, safety and welfare in that prohibiting
medical marijuana dispensaries help protect the City from the adverse impacts and
harmful secondary effects which have arisen from the operation of medical marijuana
dispensaries, including but not limited to increased crime rates that place additional
burdens on law enforcement resources.

Planning Commission Resolution Bill No. 11-004
 ZONING ORDINANCE AMENDMENT NO. 11-001
 MEDICAL MARIJUANA DISPENSARIES

1 **SECTION 3. PLANNING COMMISSION ACTION**

2 The Planning Commission hereby takes the following actions:

- 3 1. The Planning Commission hereby approves Resolution Bill No. 11-004
4 recommending that the City Council approve Zoning Ordinance Amendment 11-001
5 and adopt City Council Ordinance Bill No. 11-004, which is attached hereto and
6 incorporated herein by reference as Exhibit A.

7 **PASSED, APPROVED AND ADOPTED** this 1st day of February, 2011, by the
8 following vote:

9 **AYES:**
10 **NOES:**
11 **ABSTAIN:**
12 **ABSENT:**

13 _____
14 John Gifford, Chairman
15 Hemet Planning Commission

16 **ATTEST:**

17 _____
18 Nancie Shaw, Records Secretary
19 Hemet Planning Commission

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27 **Planning Commission Resolution Bill No. 11-004**
28 **ZONING ORINANCE AMENDMENT NO. 11-001**
MEDICAL MARIJUANA DISPENSARIES

Exhibit

No. 1A

Ordinance Bill No. 11-004

Planning Commission

Meeting of

February 1, 2011



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3 **CITY OF HEMET**
4 **Hemet, California**
5 **ORDINANCE BILL NO. 11-004**

6 **AN ORDINANCE OF THE CITY COUNCIL OF THE**
7 **CITY OF HEMET, ADDING SECTION 90-79 TO**
8 **ARTICLE III OF CHAPTER 90 (ZONING) TO THE**
9 **HEMET MUNICIPAL CODE PROHIBITING THE**
10 **ESTABLISHMENT AND OPERATION OF MEDICAL**
11 **MARIJUANA DISPENSARIES IN THE CITY.**

12 **WHEREAS**, in 1996, the voters of the State of California approved Proposition
13 215, which was codified as Health and Safety Code Section 11362.5 and following, and
14 entitled the Compassionate Use Act of 1996 (the "Act").

15 **WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to
16 legally possess, use, and cultivate marijuana under limited, specified circumstances.

17 **WHEREAS**, on January 1, 2004, Senate Bill ("SB") 420 went into effect. SB 420
18 was enacted by the Legislature to clarify the scope of the Act, and to allow cities and
19 counties to adopt and enforce rules and regulations consistent with SB 420 and the Act.
20 These new regulations and rules became known as the Medical Marijuana Program
21 which, among other things, enhanced the access of patients and caregivers to medical
22 marijuana through collective, cooperative cultivation projects.

23 **WHEREAS**, neither Proposition 215 nor SB 420 authorizes medical marijuana
24 dispensaries.

25 **WHEREAS**, the Hemet Municipal Code, including Chapter 90 (Zoning), does not
address or regulate in any manner the existence or location of medical marijuana
dispensaries.

CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPENSARIES

1 **WHEREAS**, many California cities and counties have adopted ordinances
2 prohibiting or heavily regulating such dispensaries.

3 **WHEREAS**, Cities that have permitted the establishment of medical marijuana
4 dispensaries have witnessed an increase in crime, such as burglaries, robberies, and
5 sales of illegal drugs in the areas immediately surrounding such dispensaries.

6 **WHEREAS**, the United States Department of Justice's California Medical
7 Marijuana Information Report advised that large-scale drug traffickers have been posing
8 as "caregivers" to obtain and sell marijuana, thus increasing the likelihood that such
9 traffickers in illegal drugs in the City, thereby endangering the public health, safety and
welfare.

10 **WHEREAS**, a number of cities in Riverside County have prohibited or imposed
11 moratoria on medical marijuana dispensaries. This situation creates a substantially
12 increased likelihood persons will seek to locate in such establishments within the City of
13 Hemet, thus creating a potential current and immediate threat to the public health, safety,
or welfare.

14 **WHEREAS**, in April 2009, the California Police Chiefs Association Task Force on
15 Marijuana Dispensaries published a White Paper discussing the negative secondary
16 effects of medical marijuana dispensaries on the health, safety and welfare of the
17 communities where they have been established. The report analyzes several negative
18 secondary effects including armed robberies, murders, burglaries, drug dealing, money
19 laundering and organized crime. The report states, "Because they are repositories of
20 valuable marijuana crops and large amounts of cash, several operators of dispensaries
21 have been attacked and murdered by armed robbers both at their storefronts and homes,
22 and such places have been regularly burglarized. Drug dealing, sales to minors,
loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of
23 customers just outside dispensaries are also common ancillary byproducts of their

CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPENSARIES

1 operations. To repel store invasions, firearms are often kept on hand inside
2 dispensaries, and firearms are used to hold up their proprietors.” (California Police Chiefs
3 Association’s Task Force on Marijuana Dispensaries White Paper at page V.)

4 **WHEREAS**, the City Council hereby finds and determines that events in other
5 cities and counties have demonstrated that substantial harmful secondary effects have
6 arisen from the operation of medical marijuana dispensaries, including but not limited to
7 increased crime rates that place additional burdens on law enforcement resources.

8 **WHEREAS**, marijuana presently is categorized as a Schedule I controlled
9 substance by the Federal Government. Schedule I drugs are classified as having a “high
10 potential for abuse” and “no currently accepted medical use.”

11 **WHEREAS**, the Controlled Substance Act, a Federal law codified as 21 United
12 States Code Section 841, makes it unlawful for any person to manufacture, distribute, or
13 dispense marijuana, or to possess marijuana with the intent to manufacture, distribute, or
14 dispense this drug. Marijuana used for medical purposes is not exempt from the
15 Controlled Substances Act, and therefore, persons choosing to follow the provisions of
16 California laws are subject to prosecution under Federal laws for possession and use of
17 an unlawful controlled substance.

18 **WHEREAS**, the Supreme Court of the United States ruled in *United States v.*
19 *Oakland Cannabis Buyers’ Cooperative* (2001) 532 U.S. 483, that notwithstanding
20 California law, the federal Controlled Substances Act continues to prohibit marijuana use,
21 distribution, and possession, and that no medical necessity exception exists to these
22 prohibitions.

23 **WHEREAS**, the Supreme Court of the United States ruled in *Gonzales v. Raich*
24 (2005) 545 U.S. 1, that pursuant to the commerce clause, the federal government has
25 the power to prohibit the local cultivation and use of marijuana, even though such
cultivation and use complies with California law.

CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPESARIES

1 **WHEREAS**, in *Gonzales v. Raich*, the Supreme Court of the United States did
2 not indicate that California law was invalid, but rather, merely indicated that the federal
3 government could continue to enforce its medicinal marijuana laws.

4 **WHEREAS**, this ordinance is enacted pursuant to the City's police power
5 granted by the Constitution of the State of California, in order to promote the health,
6 safety, and welfare of the residents of the City of Hemet.

7 **WHEREAS**, in enacting this ordinance, it is the Council's intention that nothing
8 contained herein be construed to allow persons to engage in conduct that endangers
9 others or causes a public nuisance, nor to allow any activity related to the cultivation,
10 distribution, or consumption of marijuana that is illegal.

11 **WHEREAS**, in light of these findings and facts, the City Council finds that it is
12 contrary to the public health, safety, and welfare to permit the operation of medical
13 marijuana dispensaries, as defined herein, within the City of Hemet.

14 **WHEREAS**, based upon its concerns regarding the adverse impacts on those
15 communities where medical marijuana dispensaries have been established, and until the
16 inconsistency between federal and state law is finally resolved, and until additional
17 information regarding the impacts of medical marijuana dispensing is considered, it is the
18 intent of the City Council of the City of Hemet to prohibit medical marijuana dispensaries
19 within the City.

20 **NOW, THEREFORE**, the City Council of the City of Hemet does hereby ordain as
21 follows:

22 **SECTION 1. Addition of Section 90-79.** Section 90-79 entitled "Medical Marijuana
23 Dispensaries" is added to the Hemet Municipal Code as shown in Exhibit "A," attached
24 hereto.

25 **SECTION 2. Compliance With CEQA.** The City Council finds that this ordinance is not
subject to the California Environmental Quality Act (CEQA) pursuant to Sections

CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPESARIES

1 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect
2 physical change in the environment) and 15060(c)(3) (the activity is not a project as
3 defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title
4 14, Chapter 3, because it has no potential for resulting in physical change to the
5 environment, directly or indirectly.

6 **SECTION 3. Findings.** The following findings are made pursuant to Hemet Municipal
Code section 90-41.5:

7 (1) The zoning ordinance is in conformance with the latest adopted general plan for the
8 City in that prohibiting medical marijuana dispensaries does not conflict with any
9 allowable uses in the land use element and does not conflict with any policies or
10 programs in any other element of the general plan.

11 (2) The zoning ordinance will protect the public health, safety and welfare in that
12 prohibiting medical marijuana dispensaries help protect the City from the adverse
13 impacts and harmful secondary effects which have arisen from the operation of medical
14 marijuana dispensaries, including but not limited to increased crime rates that place
additional burdens on law enforcement resources.

15 **SECTION 4. Severability.** If any section, subsection, sentence, clause, or phrase of this
16 ordinance is for any reason held to be invalid or unconstitutional by a decision of any
17 court of competent jurisdiction, such decision will not affect the validity of the remaining
18 portions of this ordinance. The City Council hereby declares that it would have passed
19 this ordinance and each and every section, subsection, sentence, clause, or phrase not
20 declared invalid or unconstitutional, without regard to whether any portion of the
ordinance would be subsequently declared invalid or unconstitutional.

21 **SECTION 5. Publication.** The City Clerk is directed to cause this ordinance to
22 be published in the manner required by law.

24 CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
25 MEDICAL MARIJUANA DISPENSARIES

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INTRODUCED at the regular meeting of Hemet City Council on _____,
2011.

APPROVED AND ADOPTED this ____ day of _____, 2011.

Jerry Franchville, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

**CITY OF HEMET ORDINANCE BILL NO. 11-004
ZONING ORDINANCE AMENDMENT NO. 11-001
MEDICAL MARIJUANA DISPENSARIES**

1 State of California)
County of Riverside)
2 City of Hemet)

3 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
4 foregoing Ordinance was adopted on the ___ day of _____ 2011, and was passed
5 by the following vote:

6 AYES:

7 NOES:

8 ABSTAIN:

9 ABSENT:

10 _____
11 Sarah McComas, City Clerk

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EXHIBIT "A"

Section 90-79 Medical Marijuana Dispensaries.

(a) Definitions

(1) "Establish" or "Operate" a medical marijuana dispensary (as defined in this Section) means and includes any of the following:

(a) The opening or commencement of the operation of a medical marijuana dispensary;

(b) The conversion of an existing business, facility, use establishment, or location to a medical marijuana dispensary;

(c) The addition of a medical marijuana dispensary to any other existing business, facility, use, establishment or location.

(2) "Marijuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes Marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

(3) "Medical Marijuana" is Marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of Marijuana in the treatment of acquire immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which Marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code Section 11362.7.

4. "Medical Marijuana Dispensary" means any business, facility, use, establishment or location, whether fixed or mobile, where Medical Marijuana is made available to, delivered to and/or distributed by or to three or more of the following: a "primary caregiver," "a qualified patient," or a person with an "identification card," as these terms are defined in California Health and Safety Code section 11362.5 and following. A "Medical Marijuana Dispensary" does not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 and following.

(b) *Medical Marijuana Dispensaries Prohibited.*

1. Medical Marijuana Dispensaries are prohibited in all zones in the City and shall not be established or operated anywhere in the City.

2. No person may own, establish, open, operate, conduct, or manage a Medical Marijuana Dispensary in the City, or be the lessor of property where a Medical Marijuana Dispensary is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any Medical Marijuana Dispensary in the City.

3. No use permit, site development permit, tentative map, parcel map, variance, grading permit, building permit, building plans, zone change, business license,

certificate of occupancy or other applicable approval will be accepted, approved or issued for the establishment or operation of a Medical Marijuana Dispensary.

4. Nothing contained in this Section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

(c) *Civil Injunction.*

The violation of this Section shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.