PLANNING COMMISSION

MEETING MINUTES

DATE: **February 1, 2011** **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: 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 of the Planning Commission Meeting of January 18, 2011

It was **MOVED** by Commissioner Deuber and **SECONDED** by Commissioner Thompson to **APPROVE** the minutes with the following correction: Page 13, line 42, change Deuber to Thompson.

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

AYES: Chairman Gifford, Vice Chairman Deuber, and Commissioner Rogers and Thompson
NOES: None

3. PUBLIC COMMENTS:

Siti Bah-Bah Solomon, 551 North Santa Fe, Oak Terrace Senior Apartments, Hemet, commented on the lack of sidewalks and wheelchair accessibility on San Jacinto Street and around her apartments, noting the danger for wheelchairs to be in the streets, especially when it rains, with mud and puddles.

PUBLIC HEARING ITEM(S)

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

Location: City-wide

Planner: Deanna Elliano, Community Development Director
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 adopts 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."

CDD Elliano gave a report, including background of the urgency ordinance regarding medical marijuana dispensaries that was adopted in April of 2009, extended twice, and now set to expire April 23, 2011. Staff examined a number of local ordinances, articles and reports and recent case law on the issue of medical marijuana dispensaries. As a result of their research, staff is recommending the ordinance which expressly prohibits medical marijuana dispensaries, either storefront or mobile, in all zones within the city. The ordinance also makes it unlawful for property owners to lease their property or buildings for this purpose.

Staff believes the ordinance is consistent with state law regarding a city's zoning powers because, one, it does not prohibit a qualified patient's ability to possess or cultivate or use medical marijuana in his or her own residence, nor, two, does it prohibit a primary caregiver from providing medical marijuana to his or her qualified patient as currently defined and as consistent with state law.

CDD Elliano reported that based on the information and data gathered, the uncertainty in both federal and state legislation, that an outright ban of the use within all zones within the city is recommended.

Chairman Gifford asked if the city currently has any zoning that permits medical marijuana dispensaries, and CDD Elliano responded it does not. He also asked if a qualified patient

could use marijuana within the city limits, and CDD Elliano stated yes, in his or her own residence.

Chairman Gifford also wanted to know if there is a prohibition of use outside a residence, to which CDD Elliano answered that this is a zoning ordinance relating only to establishment of medical dispensaries as a land use not to individual consumption.

Chairman Gifford also wanted to know if most dispensaries are nonprofit, mixed, or for profit. CDD Elliano said that from their research, most actually are for profit, even though they may say they're nonprofit or operate as a collaborative.

Commissioner Rogers stated he read that sometimes they take donations.

City Attorney Jex explained that there's a provision in state law that says a qualified patient and a primary caregiver, which are closely defined terms, who associate to either collectively or cooperatively cultivate marijuana for medical uses won't be criminally prosecuted on that basis alone. To form a cooperative, articles of incorporation must be filed, and it is essentially the formation of a business for the mutual benefit of those involved, and it must be a nonprofit business. A "collective" is kind of an undefined term, but it's a business that's jointly owned by its members, but there is no formal articles of incorporation process.

Vice Chairman Deuber asked if the original Ordinance 1812 was from the request of the city and if the city had ever allowed dispensaries.

CDD Elliano responded that they were just starting to get inquiries from the public; and that surrounding cities, such as Los Angeles, were experiencing difficulties in regulating the dispensaries, so the city initiated the urgency ordinance to give staff an opportunity to study the issue. The city has never allowed medical marijuana dispensaries. However, it's come to staff's attention that there are some operating in the city in violation of the urgency ordinance. However, she cannot comment on those because of an ongoing investigation and legal action by the city.

Chairman Gifford opened the public hearing portion.

Deborah Lieberman (27282 Legend Lane, Hemet) approached the lectern. She spoke in favor of establishing a dispensary in Hemet because the nearest facilities available for patients are in Beaumont/Banning and Palm Springs/Palm Desert. Because of the large population of senior citizens in Hemet, she felt the Council would do a disservice to those who cannot drive because of age or illness to get their medication. She also mentioned that alcohol and cigarettes are legal, but account for more deaths than marijuana. She stated the herb is saving lives and giving patients a quality of life that they deserve and that it's legal in California.

Ellen Gould (1499 Old Mt. Ave, San Jacinto) stated she was a senior citizen, has McArdle's disease, and was taking 18 medications a day. She has a physician's referral to use medical marijuana and is now able to function with less physical restrictions and takes only three meds now.

Siti Bah-Bah Solomon (551 North Santa Fe, San Jacinto) approached the lectern and stated that her wheelchair is her only mode of transportation. She had been a teacher for 18 years before coming to Hemet. She stated that the marijuana facilities have security, just like Wal-Mart and Walgreens. People do abuse marijuana, just like people abuse alcohol, but unlike liquor, marijuana has medical benefits. From taking 18 medications, she is now down to six and can help her caregiver when she gives her baths because the marijuana helps relieve her pain. She pleaded for liberty and justice for all, and that marijuana has been proven to be a positive and productive manner for treatment of chronic and terminal illnesses.

Chairman Gifford clarified that the Planning Commission gives its recommendation to the City Council, and the City Council makes the final decision, so they will have a chance to speak again before the City Council if they so wish.

Beju Shambow (110 E Menlo Ave, Unit 82, Hemet) approached the lectern and announced she was a medical cannabis user and showed the Commission all the medications she took before switching to cannabis. She outlined the problems that she had dealt with taking other medications and how medical marijuana had improved her life.

Richard Cox (873 Weatherly St, Hemet), a kidney transplant patient who had been on dialysis for eight and a half years, attested to the benefits of medical marijuana for his condition and pleaded with the Commission to allow it in Hemet in such a way that it's not a detriment to the community but a help to those who so desperately need the relief from pain that it provides. He mentioned that no one died from an overdose of marijuana, but many have from the effects of other medications.

Chairman Gifford asked Mr. Cox how far he would have to go if marijuana were not available in Hemet. Mr. Cox says it's constantly changing because facilities open and close, but that the federal government is against it and state says it's okay. He said it's very difficult for the older and sick citizens to travel distances to get the marijuana.

Vice Chairman Deuber asked about the November ballot measure, Proposition 19, that was defeated and about the dispensary in Beaumont.

Mr. Cox said he knew nothing of the law, but that Proposition 15 was passed by California that said medical marijuana is legal here. He indicated that Beaumont had a dispensary that closed, but now another has opened down the street. He stated that the general consensus on all of them is they open, something is found that's not liked, and they're shut down.

Mr. Andrew Blanc (225 East Central Avenue, Hemet) outlined his medical issues, the types of medications he has been taking, and some of the resultant maladies he has experienced from taking the medications. At last, his physician recommended medical marijuana, and he has not had to go back to the hospital, he is able to sleep at night, and he can't say anything bad about it. When asked by Commission members about his prescriptions, he stated his prescription is for a year, that he only purchases a small amount at a time because it dries up and is not as potent, and that he must have his medical I.D. and his medical recommendation, if it's a reputable dispensary. He stated one in Hemet is not more than five minutes from his home, that he goes there twice a week, and that there is never any kind of disturbance there, unlike at the liquor stores.

When asked by Commissioner Rogers how he found the dispensary, he stated he went on the Internet to a site called Weed Map.

CDD Elliano referred to Health and Safety Code Section 11362, which indicates that a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana for each qualified patient.

Dr. Howard Lieberman (27282 Legend Lane, Hemet) the landlord for the Wellness Clinic, said he has been moved by the testimony given and that there's a real problem distinguishing between recreational and medicinal marijuana. He stated we are on the threshold of a new, creative method of treatment, especially with terminal cancer, and that Hemet has an expert in addictive medicine that has not been utilized in explaining to lawmakers how a regulatory consult should be established so that people in pain and suffering can be relieved.

He pleaded with the Commission to let the medical profession regulate, decide on dosages, a matter of prescription, and instead of saying no, you can't have it and let people suffer, please confer with the experts.

Edmond Hooper, Jr. (35051 Cedar Ridge Court, Winchester, California 92516) operates a collective in Hemet since September of 2010, a nonprofit mutual benefit corporation where people make donations and can obtain up to four pounds, not eight ounces, of medical cannabis. He has 12 to 15 employees in Hemet and says he is 100 percent legitimate.

After some discussion, Chairman Gifford stated that the Commission is not the forum for a legal issue, but that they must limit their discussion to the ordinance, as that is the agendized matter to be discussed. He asked Mr. Hooper if anyone can start a collective.

Mr. Hooper says one applies with the federal government and gets nonprofit mutual benefit corporation paperwork. They do a background check, and if one passed that, are able to open a collective.

Chairman Gifford asked if anyone who has a medical condition for which they are qualified as a patient with medical marijuana is able to cultivate their own marijuana.

Mr. Hooper said they can either make a donation and get it from a collective, or they can grow their own. The problem comes when the guidelines are in limbo, as the law used to say you could have six mature plants, 12 immature, but a large man and a petite woman have different requirements for amounts of the herb.

Chairman Gifford asked how long eight ounces of marijuana would last for a patient, and Mr. Hooper explained it varies from person to person. For him, it would last 16 days; someone else may use eight ounces in four months.

Vice Chairman Deuber asked when he started his business and if he knew at that time that such a business was against the zoning ordinance.

Chairman Gifford stated that the Commission did not want to get on the record anything that may end up in litigation, and requested that this question and answer be addressed in a different forum.

Mr. Donovan Lessley (2426 Cypress Street, Hemet 92545) explained that he wants to open a legitimate nonprofit corporation selling medical marijuana, but there are so many grey areas in California, unlike Arizona which has a black-and-white plan with places to dispense the medical marijuana, places where medical marijuana is cultivated, and people who can transport it without being prosecuted, because there is paperwork that makes it legal.

He recounted his background, indicating when he was 17, he found his father hanging, trying to commit suicide and that he has since suffered from flashbacks, sleeplessness, diagnoses of manic depression and bipolar disorder, and having taken medications that made him feel like a zombie, but that medical marijuana helps him feel normal.

He also indicated that his father, who survived a suicide attempt but with severe brain damage, does not drool, moan or weep when taking medical marijuana. His father, who has emphysema and can't smoke marijuana, eats it, so requires more of the marijuana to work for him.

Mr. Lessley requested that Hemet pave the way in Southern California by giving permits so legitimate businesses can be established by people who want to abide by the law, because if not, people will run them illegally and the problem will not go away.

Commissioner Rogers asked if medical cannabis can be obtained from a pharmacy or a business like Walgreens under a doctor's prescription.

Mr. Lessley responded that since it's federally illegal, Walgreens has a national license, so they are not going to risk federal charges. He stated it's either the streets or the dispensaries.

Chairman Gifford closed the public meeting and asked for additional comments from staff or commissioners.

Commissioner Thompson inquired about the definition of a state-licensed health care facility.

City Attorney Jex stated the ordinance in question would not apply to those organizations that receive some kind of state permit or license regulated through the state, such as residential care facilities for chronic, life-threatening illness or home health agencies, so those organizations can dispense marijuana under this ordinance, but they have to be certified under that state license provision.

Commissioner Rogers asked for statistics relative to crime around the collectives' locations. CDD Elliano cautioned that they could not talk about any particular ones in town, but just in general. She indicated she had a report from the Police Officers Association and would make copies for them.

Sgt. Dixon stated he did not have statistics on crime around collectives, either in Hemet or elsewhere, but he could answer other questions.

Chairman Gifford asked for background on the report. CDD Elliano answered that the report is from the White Paper on Marijuana Dispensaries prepared by the California Police Chiefs Association Task Force in April of 2009. The conclusion was there is an increase in this type of criminal activity, especially with the dispensaries. She wasn't sure if it differentiated between legitimate caregiver operations and those operations which were not legitimate.

Commissioner Rogers asked if there were any local statistics available, and CDD Elliano alluded to testimony from the public tonight about armed guards, indicating a fear of burglaries.

There were a number of off-the-record comments from audience members, and Chairman Gifford reminded them the public hearing was closed. He also asked if the county has an ordinance that deals with marijuana dispensaries.

CDD Elliano and City Attorney Jex reported that Riverside County has an ordinance that prohibits medical marijuana dispensaries in all zones.

Chairman Gifford summed up his feelings on the ordinance, saying his heart goes out to the medical marijuana community, but that they have choices: Alternate sites for dispensaries, cultivation, so they do have access to what they need. However, he felt if they did not pass the ordinance, then the other side of the question, the rest of the community, no longer has that choice.

Vice Chairman Deuber and Commissioners Rogers and Thompson agreed with Chairman Gifford's position, but expressed their compassionate feelings.

It was **MOVED** by Commissioner Deuber and **SECONDED** by Commissioner Rogers to **ADOPT** Planning Commission Resolution Bill No. 11-004, approving ZOA-11-001, entitled "A resolution of the Planning Commission of the City of Hemet recommending the City Council adopt an ordinance adding Section 90-79 to Article III of Chapter 90 under zoning to the Hemet Municipal Code prohibiting the establishment and operation of medical marijuana dispensaries within the city."

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

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

NOES: None

DEPARTMENT REPORTS

5. UPDATE REPORT REGARDING PROPOSED AMENDMENTS TO THE ZONING REGULATIONS FOR DOWNTOWN HEMET – Verbal report by City Planner Ron Running

Planner Running outlined the Hub of the Valley historic commercial core for Hemet as south of Devonshire and north of Kimball. In a Power Point presentation, he pointed out the D-1 and D-2 zones and the Hub of the Valley overlay zone. He indicated that there have been changes with the General Plan Update, such as changing the name"Hub of the Valley" to "Downtown Overlay District".

He outlined many changes that are proposed, such as setbacks, height of buildings, sign standards. The proposal takes the Downtown Overlay District guidelines out of the General Plan and creates a design guideline booklet for that area. He proposed a combination of a lot of different design elements that make nice and exciting downtowns, such as streetscape furniture, introduction of trees, attention to rears of buildings, different parking schemes, mixed-use buildings, restoration of old buildings, construction of new buildings made to look old, etc.

Chairman Gifford commented that the city is lucky to have Planner Running because the downtown is a gem that the city needs to take advantage of. He asked if there were some kind of an overarching theme for this downtown area.

Planner Running explained that the theme would be more in the building components and scale rather than one particular architectural theme. Spanish style, period federal Victorian would be appropriate, but the city should celebrate the mix that exists already.

Chairman Gifford felt that with connections between buildings and plazas, elements that tie it together would be helpful. But the real crux is how to attract more business downtown. There needs to be something that acts as a hub for the city and brings more business into town. He also asked about the state giving up Florida Avenue as a state highway.

Planner Running said that the state has done nothing as of now, but that they had indicated they relinquished their designation for Hwy 79 in San Jacinto.

Chairman Gifford said he realized there is a cost to the city of maintaining the highway, but in the long term, the quieting of traffic would make the city center a more pedestrian-friendly, shopping-friendly area.

Planner Running said it took Pasadena and Monrovia 30 to 40 years to do their downtowns, so it's not a quick fix. He compared it to applying makeup, one layer at a time, to achieve a patina of the structures. He indicated a lot has been done already, such as underground utilities and some of the streetscape, but Hemet has a long way to go.

Vice Chairman Deuber pointed out several anchors to model from, one being the library architecture, which could serve as a model for city buildings. The other model is the restoration of the depot, the Victorian aspect, most appropriate because of the centennial of Hemet. She appreciated the restriction of height to preserve the vistas and noted that with the parapets, the single-story buildings could appear almost majestic.

Commissioner Rogers expressed his excitement about the city plan and also stated he appreciated pedestrian amenities and bicycle paths.

Planner Running noted that this plan is a stepping stone. There needs to be more detailed planning such as the infrastructure, but they have an applicant that wants to rebuild, and staff wishes to allow him flexibility to go forward, but the City will need to work on a comprehensive plan, or specific plan for downtown.

Commissioner Thompson appreciated how the plan incorporates the Metrolink station.

CDD Elliano stressed that the architectural theme in the historic core needs to be centered on historic structures, the kind of turn-of-the-century style. She does not see modern as appropriate, but a modern interpretation of Mediterranean, traditional Federalist or Colonial would work well. She also stressed the need of special signage so people know when they're entering this downtown district. Signing does a lot to point out the different character and different sense of place from the rest of the city, as do street trees, to make it more inviting. She hoped that replacing the Hub of the Valley name with Downtown Overlay District would not be a problem.

Vice Chairman Deuber suggested that including the word "historic" with "downtown district" might work. She also approved of the trees in the downtown district and remembered being in other cities with trees lit at night in the historic districts.

CDD Elliano stated some businesses wanted to invest in downtown, and there are public spaces like sidewalks and parking lots that need upgrading. She suggested using CDBG or redevelopment funds for those upgrades. She also said that setting design guidelines, which are adopted by resolution, are easier to modify and change and add to over time than going back in and doing ordinances to change the code. It becomes a growing, evolving process, with the first guidelines being the initial steps.

6. 2010 CALIFORNIA GREEN BUILDING CODE REPORT - Power Point presentation by City Planner Ron Running

Planner Running explained that all cities must comply after January 1, 2011, with the CAL Green Code, specifically mandating reduction of grid-based electricity by 20 percent in state-owned buildings by 2015, and AB-32, reducing greenhouse gas emissions to 1990 levels by 2020. Water usage in California also has new state mandates with Tier 1 and Tier 2 requirements. LEED-certified buildings with the different tiers will also be required.

Planner Running advised the Commission that the city in the future will be presenting their own sustainability plan, with the ability to establish their own thresholds. However, the mandates for these efficiencies are going to put a lot of extra work on the building department, such as requirements for water management, energy efficiency (insulation), 20 percent reduction in indoor water usage (shower heads, plumbing fixtures, irrigation controllers), recycling of all non-hazardous construction materials and debris, operation manuals for all new buildings, direct vent fireplaces, paint requirements, moisture barriers for concrete, exhaust fans for bathrooms.

He delineated the different measures for Tier 1 and Tier 2 building requirements. The city has adopted this code so it's already part of the city codes.

Chairman Gifford asked if the city is setting any kinds of goals for LEED-certified building categories. Planner Running answered that if a builder wants to get that certification, the city will support that. Once the sustainability plan is developed and a goal for the city is set to meet the 1990 levels, then they will see how extensive their efforts will have to be to meet that.

Commissioner Rogers asked if the developers are screaming yet, and Planner Running responded that because building activity has been slow because of the economy, they haven't heard much yet.

Commissioner Thompson asked how they are going to determine 1990 levels when there is now double the population and if fines or penalties will be imposed if levels are not met.

Planner Running said it's been quantified what those levels were, but he could not remember what those levels were, but that the legislature indicated they were going to try to do that through clean vehicles and a variety of clean energy. The city will have to decide what it's going to do for its share, such as recycling, clean vehicles, etc. As yet, he has not heard anything about fines.

Vice Chairman Deuber stated regulating the development industry is the first step and that it takes responsibility off the homeowner. Also, she anticipated state incentives, like solar energy rebates.

Planner Running said Proposition 84 grants, which make up to a million dollars available to cities for planning these types of things, are already in place.

Commissioner Thompson asked if there is a time frame by which retailers have to be compliant with building materials.

CDD Elliano stated for new development, they are under those requirements as of January 1, 2011. McDonald's is going through reconstruction, so that construction waste now has to be sorted and 65 percent delivered to a recycling site. The codes have already been adopted by the State, and the local governments have to comply, so they are handling this since January 1 on an ongoing basis for any new permits.

On the regional planning level in terms of greenhouse gases and making 1990 targets, the city is participating with WRCOG and SCAG in doing sustainable community strategy and regional transportation plans, which then go to the State and requirements passed through the regional agencies to local communities.

Chairman Gifford asked if the city was going to implement Tier 1 or Tier 2, and CDD Elliano stated the city is doing what was mandated and until SGAG gets its targets and this all shakes out, then they'll see what is needed in terms of additional measures.

Commissioner Rogers said he is looking forward to some of the changes, such as regulating sprinklers, and that it will be costly, but in the end, good for everybody.

Vice Chairman Deuber asked if the city is offering incentives for such things as low-flow toilets on rehabbing older residences, and CDD Elliano said that most of the incentives are

coming from the utility companies like water districts and Edison. Ms. Deuber shared her experience in San Diego, where the permit counter personnel walked her through all the incentives available, even supplying vouchers. She felt it was a good way to educate residents.

CDD Elliano said that although they don't currently have the resources to produce those materials, they could request them from the companies offering incentives and display them at the counter.

Commissioner Rogers said there is a place on-line that lists 200 or 300 items, and Vice Chairman Deuber stated instead of just doing what is mandatory, the city could embrace Tier 1 as it's done one house at a time, one resident at a time.

7. COMMUNITY DEVELOPMENT DIRECTOR REPORTS:

A. Report on City Council Actions from the January 25, 2011 meeting

CDD Elliano noted two work study sessions, one from the Hemet/San Jacinto Action Group regarding the pending supervisorial redistricting, the main thrust of which was in keeping Hemet and San Jacinto together as an entity, whether it remains in the current supervisor's district or has to go to another district.

The other presentation was of the community block grant applicants, 20 applicants for CBDG funds, a number of which were social service providers, both faith-based and other nonprofits. There's a very limited amount of money available, so it will be a difficult process that City Council will be sorting through.

B. Interim Shopping Cart Abatement Program

A presentation was provided to the City Council on the Planning Commission's recommendations. They were enthusiastic about it, so staff is formulating the final version of the ordinance and bringing that back by the last meeting in February for formal adoption. In the meantime, code enforcement and City public personnel are being proactive in picking up carts, 40 on Thursday.

And on Saturdays, public works has a youth group that gets a flatbed and cruises the neighborhoods and picks up all the carts. The City yard now has over 400 shopping carts, unclaimed by the retailers. A letter is going out indicating that within a one-or-two week period of time, a cart amnesty will be available and they can pick up their carts at no charge, but thereafter, the carts will be sent to a recycler.

Commissioner Rogers asked if they have been getting feedback from the retailers, and CDD Elliano reported that she is getting good compliance from the large retailers like Home Depot, Lowe's, Stater Bros, but that she hasn't heard from the small retailers.

8. CITY ATTORNEY REPORTS: (None)

9. PLANNING COMMISSIONER REPORTS: (None)

10. FUTURE AGENDA ITEMS:

CDD Elliano stated that the CEQA Update would come to them when they have their new member, as would SB-375 and AB-32 Implementation Update, which Planner Running's CAL Green presentation is a part of that whole picture. Staff is finalizing the Tres Cerritos Specific Plan Amendment and working on the EIR findings, so those should come to them in March.

The Downtown Zoning Ordinance Amendment & Design Guidelines was introduced this evening and should come forward to the Commission in the next couple of weeks.

11. ADJOURNMENT at 8:34 p.m. to the regular meeting of the City of Hemet Planning Commission scheduled for March 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.

John Gifford, Chairman
Hemet Planning Commission

ATTEST:

Nancie Shaw, Records Secretary
Hemet Planning Commission