

**BACKGROUND**

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Context

Devine River Healing, Inc, is proposing to establish a new medical marijuana dispensary within an existing 1,574 square foot in-line suite located in the Pleasant Promenade Retail Center at 20340 N. Lake Pleasant Road, Suite 107 (Exhibit A). This center is located near the NWC of Beardsley Road and Lake Pleasant Road.

General Plan

The subject property is designated Low Density Residential (2-5 du/ac) on the General Plan Land Use Map.

Zoning

The site is zoned Intermediate Commercial (C-2). The C-2 district is intended to provide opportunities for the sale of convenience goods and services. (Exhibit B)

Adjacent Uses and Zoning

Table 1 summarizes the existing land use, General Plan designation and zoning for the surrounding areas.

*Table 1 – Existing Land Use, General Plan, and Current Zoning*

	<b>EXISTING LAND USE</b>	<b>GENERAL PLAN</b>	<b>ZONING</b>
<b>Subject Property</b>	<b>Vacant Commercial in-line suite</b>	<b>Low Density Residential</b>	<b>Intermediate Commercial (C-2)</b>
North	Sun Grove Professional Plaza	Low Density Residential	Office Commercial (O-1)
South	Walgreens	Low Density Residential	Intermediate Commercial (C-2)
East	Ventana Lakes Village Center	Low Density Residential	Intermediate Commercial (C-2)
West	Vacant Property	Low Density Residential	Intermediate Commercial (C-2)

Other Related Policies and Project History

A previous medical marijuana dispensary received approval of a Conditional Use Permit to operate at this location in June, 2011. The applicant did not move forward with building permits at this site, and consequently the approved Conditional Use Permit (CUP) expired in December, 2012, eighteen months after approval.

State Regulations

Proposition 203 was approved by Arizona voters on November 2, 2010 authorizing the use, sale, and cultivation of medical marijuana in Arizona. Proposition 203 also authorized cities the ability to enact reasonable zoning regulations that limit the use of land for registered non-profit medical marijuana dispensaries and cultivation. The Arizona Department of Health Services (ADHS) is the agency responsible for the adoption and enforcement of the regulatory system currently used for the distribution of medical marijuana, including the system used for registering qualifying patients, designated caregivers, non-profit dispensary/cultivation sites, and dispensary/cultivation agents.

The Medical Marijuana Act went into effect on April 14, 2011. Applications for a dispensary registration certificate were not accepted until May, 2012. The total number of certificates authorized was based on the number of pharmacies within the State. For every ten (10) licensed pharmacies, one (1) medical marijuana dispensary was allowed. This equated to one-hundred twenty-six (126) possible certifications/dispensaries. In an effort to ensure patient access throughout the State, ADHS limited the number of registered dispensaries according to geographic regions referred to as Community Health Analysis Areas (CHAA). One dispensary was permitted within each CHAA (Exhibit C). A random selection process was used if more than one (1) application was received for a CHAA.

The City of Peoria currently lies within three (3) different CHAAs: #38 Maricopa Co. N, #39 Wickenburg, and #41 Peoria. The CHAA referred to as #41 Peoria contains a majority of the City and currently has a medical marijuana dispensary operating west of the southwest corner of 91<sup>st</sup> Avenue and Peoria Avenue. This dispensary received approval for a Conditional Use Permit through the Planning and Zoning Commission on April 18, 2013. This has been the only operating medical marijuana dispensary within the City limits to date. There are two (2) other locations in southern Peoria that have received a Conditional Use Permit to operate a medical marijuana dispensary, but have not begun operations as of this report (Exhibit D).

For the first time since the initial calculation, the number of pharmacies within the State has been re-evaluated and there are now thirty one (31) dispensary registration certificates available. ADHS was accepting applications between July 18-29, 2016. The CHAAs will remain as-is and the disbursement of the dispensaries within the CHAAs will be based on the areas with the most registered patients. The CHAA referred to as #41 Peoria is currently ranked number seven (7) on the priority list for another dispensary (Exhibit E).

**APPLICANT’S PROPOSAL**

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Goal/Purpose of Request

The applicant is requesting the approval of a Conditional Use Permit to operate a

medical marijuana dispensary within a 1,574 square foot suite, which will consist of a lobby, patient consulting/sales area, along with office and storage space (Exhibit F). The proposed hours of operation are Sunday through Saturday from 8:00 a.m. to 9:00 pm (Exhibit G).

**Development Information**

- Existing Use: Vacant commercial in-line suite
- Proposed Use: Medical Marijuana Dispensary
- Suite Size: 1,574 square feet

**DISCUSSION AND ANALYSIS**

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**Details of Request**

As stated above, the applicant is proposing to operate daily from 8:00 a.m. to 9:00 p.m. The number of employees present at any one time will range from three (3) to five (5) depending on the staffing needed to serve patients. The average number of patients during a non-peak time is two (2) with peak times increasing to ten (10). The waiting area has capacity for ten (10) patients. The applicant is anticipating approximately fifty (50) patients per day. Patient visits are typically short, lasting less than ten (10) minutes.

Once a patient enters the facility, they are required to check in and produce a valid ADHS Medical Marijuana Patient Registration Card (MMRC) along with an Arizona issued License or Identification Card. Their MMRC is also checked against the State’s database to ensure expiration has not occurred and that the patient has a sufficient allotment allowed to purchase. This is all done in the lobby where there is no access to any medical marijuana. Once the patient has been verified, they wait to be brought back to the patient consulting area with a Dispensary Agent. The patient will then select, receive, and pay for their medication. Medical marijuana is offered in its natural plant form, as well as preparations made from the marijuana plant, including infused edibles, topical lotions, balms, and oils. All ancillary retail sales are done in the patient consulting area; therefore only patients have the ability to purchase items at the dispensary. These items include t-shirts, hats, general promotional materials, educational materials, and products designed to aid in the administration of the medical marijuana.

Security measures have been taken as required by ADHS and the City. A security guard will be posted onsite during all business hours to ensure no one is loitering or using product on the premises. There will also be a security system installed to include a video surveillance system consisting of twelve (12) cameras covering the front and rear entrance/exit portions of the building and the interior of the building. The cameras will record 24-hours per day and footage will be kept for sixty (60) days (Exhibit H). A lighting system is also in place that illuminates the interior and exterior perimeter at all times (Exhibit I).

Applicability

The subject property is zoned Intermediate Commercial (C-2), which allows a medical marijuana dispensary through the issuance of a Conditional Use Permit, subject to limitations.

Article 14-9-5-K of the Zoning Ordinance provides the following limitations on medical marijuana dispensaries. Staff responses are in *italics*.

1. Vehicular access into the center or site containing the dispensary shall be from an arterial roadway.

*The dispensary can be accessed from Lake Pleasant Road, an arterial roadway.*

2. The use shall not be located within 2,640-feet of another Medical Marijuana Dispensary or Medical Marijuana Manufacturing or Cultivation Facility.

*The closest location, Arizona Natural Selections, is over 2,640 feet away. Arizona Natural Selections is located at 91<sup>st</sup> Avenue and Peoria Avenue, approximately six miles from this proposed location.*

3. The use shall not be located within 1,000-feet of the property line of Day-Care Facilities, Pre-Schools, Public/Charter or Private Schools.

*The closest location, Parkridge Elementary School, is approximately 1,500 feet away.*

4. The use shall not be located within 1,000-feet of a Retail Liquor Store; Tavern, Bar or Lounge; Adult Use; Substance Abuse Treatment Centers; or State Local Alcohol Reception Center.

*The area surrounding the proposed location does not contain any of these uses.*

5. The use shall not be located within 500-feet of the property line of a residentially-zoned property.

*The closest location, a residentially-zoned parcel located in Sun City, is over 500 feet away.*

6. The product offered for retail sales to Medical Marijuana Cardholders shall be inaccessible to the public entering the Medical Marijuana Dispensary. All product provided for retail sales shall be located behind a counter staffed by a Nonprofit Medical Marijuana Dispensary Agent as defined by A.R.S. § 36- 2801.et.seq.

*The dispensary will only sell product to Medical Marijuana Cardholders that are inaccessible to the public and placed behind a counter staffed with a Dispensary Agent.*

7. The Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than 9:00 p.m.

*The hours of operation will be daily from 8:00 a.m. to 9:00 p.m.*

8. The Cultivation of Marijuana is prohibited.

*No on-site cultivation will be performed.*

9. Delivery services are prohibited.

*The dispensary will not be making any deliveries.*

10. Drive-through services and sales are prohibited.

*The in-line suite does not have a drive-through window.*

11. Alcoholic beverages shall not be sold, stored, distributed or consumed on the premises.

*No alcoholic beverages will be sold.*

12. The Dispensary shall not have outdoor seating areas, but shall have adequate indoor seating to prevent outside loitering.

*The dispensary will have seating for up to 10 patients in the lobby.*

13. The business entrance and all window areas shall be illuminated during evening hours and shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding etc.

*The dispensary will utilize lighting in line with City standards.*

14. The windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

*The applicant will leave the windows clear of obstruction, and keep all entrances well-lit with conspicuous security measures, including security camera, locking doors, a security guard, and remote monitoring.*

15. The use shall provide a plan to ensure that no consumption of Marijuana or any product containing Marijuana occurs on the premises of a Medical Marijuana Dispensary.

*Marijuana consumption is prohibited on the premises. Security personnel will monitor this with a zero tolerance policy.*

16. Tenant improvement plan shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes.

*The applicant will utilize all proper ventilation, air filtration, and building design according to the building codes adopted by the City of Peoria.*

Section 14-39-12 of the Zoning Ordinance outlines the applicable criteria for evaluating Conditional Use Permits. In general, the purpose of a CUP is to mitigate any identified negative impacts on the surrounding neighborhood that may result from a specific use, and provide controls to ensure maximum compatibility between nearby land uses.

#### Compatibility With Surrounding Land Uses

The proposal meets all distances separations required for a medical marijuana dispensary, including schools, day care centers, bars, taverns, liquor stores, substance abuse treatment centers, and residentially-zoned properties (Exhibit J). A list of all businesses located within 1,000 feet has also been provided (Exhibit K).

A dispensary in the north portion of the City creates an opportunity to better serve the citizens requiring this service. The AZDHS lists Peoria as the 7<sup>th</sup> highest area of need for cardholders. This proposal also will utilize a vacant suite within an existing commercial center. Moreover, the use will have access to an adequate supply of parking at the center. Staff does not anticipate any negative impacts that would affect adjoining or nearby uses as a result of this request.

If any issues arise regarding the operation of the business, Section 14-39-12.1 of the Zoning Ordinance provides the Planning Manager may recommend to the Planning and Zoning Commission that a permit may be revoked, , modified, or suspended should any of the following occur:

- a. The permit was obtained by fraud or misrepresentation;
- b. The use authorized by the CUP has been exercised in violation of the conditions of approval.
- c. A change in circumstances where the following has occurred:
  1. Impacts from the approved CUP to neighboring properties; and
  2. Changes in aesthetic or environmental impacts such as noise, odors, or pollution.
- d. The use authorized by the CUP is operated in a manner that constitutes a nuisance to neighboring property owners, adjacent neighborhoods, or the

City; or is exercised in a manner that is detrimental to the public health, welfare or safety.

## **COMMUNITY INVOLVEMENT**

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### Outreach Requirements

The application was properly noticed pursuant to Section 14-39-6 of the Peoria Zoning Ordinance, which includes notification to all property owners within 600 feet of the site and registered HOA's within one (1) mile, posting a sign on the site, and placing an ad in the Peoria Times at least 15 days prior to the Public Hearing.

### Support / Opposition

Opposition was received on December 28, 2016 via email from a citizen of Peoria (Exhibit L). The appellant does not feel the location is appropriate due to proximity of the elementary school and residential developments.

Since the opposition was received within 21 days of the notice of application in accordance with Section 14-39-12.F a neighborhood meeting was required to be held by the applicant. The applicant provided notice for the neighborhood meeting in accordance with Section 14-39-6. The meeting was held on February 27, 2017, at the Sunrise Mountain Public Library Community Room at 6:00 p.m. Twenty-seven (27) members of the public were in attendance at the neighborhood meeting, though not every attendee signed in. Comment forms were given to attendees at the meeting as another way to receive input. Input from the meeting mainly consisted of:

- Concerns regarding security and on-site controls;
- Not wanting the use in their neighborhood;
- Positive feedback regarding the benefits of medical marijuana versus typical prescription medication.

Staff has received eight (8) phone calls from Ventana Lakes residents since the neighborhood meeting. One (1) phone call was in support; seven (7) were opposed due to the proximity of the elementary school, residential developments, and senior living centers. Further opposition via email was received on March 31, 2017, from a Westbrook Village resident stating the use will attract a criminal element to the area.

The applicant has continued to respond directly to those who submitted questions/comments/concerns and to emails and phone calls received from citizens since the meeting that have had questions and concerns.

### Proposition 207 Waiver

The voters of Arizona approved Proposition 207, which among other things requires municipalities to compensate property owners for actions which have the effect of diminishing the value of property. The City Attorney's Office has drafted an agreement

which waives the applicant's rights to future Proposition 207 claims against the City. Accordingly, the applicant has furnished a signed and notarized Proposition 207 Waiver.

**STAFF RECOMMENDATION**

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Based on the following findings:

1. The request is consistent with the City of Peoria Zoning Ordinance and compatible with the uses in the surrounding area;
2. The proposal meets the Conditional Use Permit standards and complies with the use limitations for a Medical Marijuana Dispensary;
3. The application has been reviewed and approved by the Peoria Police Department;
4. The use will be located and will operate in a manner that protects the adjacent properties and businesses from nuisances and is consistent with a retail/service character of the area;
5. The use, in conjunction with the conditions of approval, will operate in a manner that will not negatively impact the adjoining uses; and,
6. The applicant/owner has submitted a signed and notarized a Proposition 207 waiver, which will be recorded with the conditions outlined below.

Staff recommends that the Planning and Zoning Commission take the following action:

**Approve the applicant's request for a Conditional Use Permit under Case CU16-0032, subject to the following conditions:**

1. The use shall substantially conform to the Project Narrative, Security Plan, and Floor Plan as contained in the staff report to the Planning & Zoning Commission dated April 20, 2017;
2. The applicant shall secure any necessary security system and/or alarm system permits from the Peoria Police Department;
3. The use shall fully comply with all state and local laws and Arizona Department of Health Services regulations pertaining to medical marijuana dispensaries;
4. The applicant shall post a no loitering sign on all sides of the suite;
5. Any expansion of the use, or material modification of the tenant suite shall require an amendment to the Conditional Use Permit;
6. In accordance with Section 14-39-12.B.5 of the Peoria Zoning Ordinance (1977 Edition), the Conditional Use Permit will expire on 10/20/2018 if the use has not



began operating or a building permit has not been obtained; and,

7. The applicant shall obtain a sales tax license and properly report all sales.

**REPORT PREPARED BY**

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Jennifer Fostino  
Planner  
623-773-7565  
jennifer.fostino@peoriaaz.gov