

**W**ith last November's passage of Proposition 203, the Arizona Medical Marijuana Act, a new real estate market emerged, along with a new set of concerns and challenges for landlords and potential dispensary operators.

Even before the passage Prop. 203, many local jurisdictions moved to adopt zoning codes to regulate where dispensaries and growing operations could be located. These regulations were aimed to prevent some of the problems caused by lack of control over medical marijuana dispensaries in other states that have legalized its sale.

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In contrast, the State of Arizona is still in the process of developing its regulations. The second draft of requirements for licensure came out on January 31, with a public comment period following. The final regulations are expected to be issued at the end of March, with applications for dispensary licenses accepted in May.

The current draft of regulations dictates that only one dispensary license will be granted per CHAA, Community Health Analysis Area, which divides the state into districts originally established by the Arizona Department of Health Services to track cancer rates. This essentially divides the state up into districts, with approximately 11 in the Tucson metro area. If there is more than one qualified applicant in a CHAA, a lottery will be held to decide the party who gets the license. This lottery system has been highly criticized in public hearings and commentary, and may be modified in the final draft regulation.

Regulations vary amongst the various jurisdictions. Most applicants have been looking for dispensaries in the City of Tucson, since the majority of the CHAAs are in the City, and because the City regulations, while strict, do not require a public hearing for local zoning approval. Pima County, in contrast, requires a Type III Conditional Use permit for dispensaries, meaning that applications must be approved by the Board of Supervisors through a public hearing process.

Within the City and the County, dispensaries are only permitted in C-2 and C-3 zones, and cannot be located within 1,000 feet of a church, school, day care, library or public park, and cannot be within 2,500 feet of a licensed substance abuse treatment center. Dispensaries must also be at least 2,000 from another dispensary. This makes it extremely difficult to find acceptable locations, particularly with the number of churches and charter schools in shopping centers and business parks. Dispensaries can be 2,500 sf, with an additional 3,000 sf allowed for growing. Growing-only operations can be in either I-1 or I-2 zones, with the same location restrictions.

Adding to the difficulty of finding acceptable sites is the reluctance of many landlords to rent space for dispensaries. Many of the major commercial property owners in Tucson have chosen not to rent for this use fearing negative reactions from other tenants, as



well as concern over potential increase in crime. In fact, many major tenants have included clauses in their leases that medical marijuana uses not be allowed in their centers.

In short, most potential dispensary operators are being forced into purchasing property, rather than leasing. Compounding this difficulty, most banks refuse to lend for this use, citing concerns over the fact that marijuana is still illegal at the federal level. Some banks have even stated that they will not maintain bank accounts for these facilities.

Even with these challenges, there are many groups that are actively pursuing sites for both dispensaries and cultivation. And, it appears that the State of Arizona and local jurisdictions have done a good job in avoiding some of the problems that have arisen in other states. Whether or not they've made things too restrictive remains to be seen, once applications have been received and licenses have been issued.

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