

CITY CLERK ORIGINAL

C-8041
05/16/2012

SETTLEMENT AGREEMENT

Effective May 16, 2012, PP Wellness, an Arizona non-profit corporation, and the City of Glendale, Arizona, ("Glendale") agree as follows:

RECITALS

1. PP Wellness has leased property within a shopping center located at 8160 W. Union Hills Drive, Glendale, Arizona, ("Site") for the purpose of applying to the Arizona Department of Health Services for issuance of a medical marijuana dispensary certificate ("Certificate"), and once a Certificate is issued to PP Wellness, for the purpose of operating a nonprofit medical marijuana dispensary ("Dispensary") pursuant to A.R.S. § 36-2804. The Site is located in an area that has been zoned C-2 since 1998.

2. In April 2011, PP Wellness submitted an application to Glendale to operate a Dispensary at the Site under Glendale Zoning Ordinance § 7-802. Glendale denied the application based on the separation requirement that the Site not be within 500 feet of a residentially zoned property. On the east, approximately 450 feet from the Site, a residential zone exists, but it is occupied by the 101 Freeway. On the west, approximately 350 feet from the Site, a residential zone exists, but falls within the designated New River Floodway.

3. As a result, on April 28, 2011, PP Wellness submitted Variance Application No. 11-02 to the Glendale Board of Adjustment seeking a variance from the strict application of the 500-foot separation requirement. On March 8, 2012, the Board took up consideration of the Variance Application and denied it.

4. PP Wellness filed a statutory special action ("Lawsuit") in Arizona Superior Court, Maricopa County, challenging the denial of the variance and alternatively to have the separation requirement declared *ultra vires* or unconstitutional as applied in this particular case and seeking an injunction prohibiting Glendale from applying the separation requirements. The Lawsuit is captioned *PP Wellness v. City of Glendale et al.*, and numbered LC 2012-000176.

5. In the Lawsuit, PP Wellness also filed an application for interlocutory order and for preliminary injunction. On April 13, 2012, the Court conducted an evidentiary hearing of the application, and on April 16, 2012, issued a preliminary ruling in favor of PP Wellness. The preliminary ruling was expressly based on the specific circumstances of this case, including the stipulation by PP Wellness to remove the dispensary on six months' notice if the Freeway or Floodway parcels are developed for a residential use as that term is defined in footnote three of the Court's ruling.

6. The purpose of this Agreement is to minimize additional legal costs, and to settle and compromise this dispute between PP Wellness and Glendale now and forever. This Agreement does not constitute an admission as to any fact or legal principle, and is not intended to change the application or interpretation of Glendale's zoning ordinance as to any other property.

COVENANTS

1. The Recitals are adopted herein by reference.
2. Concurrently with the execution of this Agreement, Glendale agrees to have its authorized representative execute and deliver to PP Wellness the Documentation of Compliance with Local Jurisdiction Zoning published by the Arizona Department of Health Services in the form of Exhibit 1 hereto, which is adopted herein by reference.
3. Glendale's authorized representative will also issue a standard approval letter for medical marijuana dispensary applicants in the form of Exhibit 2 hereto, which is adopted herein by reference.

4. The standard approval letter (Exhibit 2) contains a section that provides as follows:

This tentative approval is valid for 60 days from the date of this letter. If you are unable to acquire the necessary license within this time period you may request an extension of time in writing to the Planning Department. In order to qualify for the extension, you must provide evidence that work is continuing with either the licensing agency or the City of Glendale. Otherwise, the reservation shall become null and void.

Anything in the quoted provisions to the contrary notwithstanding, upon written request from PP Wellness, the 60-day period will be extended as a matter of course for additional periods of 60 days each until the Department of Health Services makes its final decision on PP Wellness's Certificate application so long as PP Wellness pursues the application with reasonable diligence.

5. All parties agree to dismiss the Lawsuit without prejudice, each party to bear its own attorneys' fees and costs.
6. PP Wellness shall have the right to specifically enforce this Agreement in the event of breach.

7. This Agreement constitutes the full and entire agreement between the parties related to its subject matter, and this agreement supersedes and replaces all understandings, agreements, or covenants entered into or reached before the date of execution of this agreement.

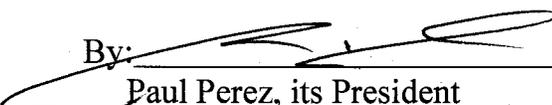
8. In the event of litigation over this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees, court costs, and related lawsuit expenses, including expert witness fees.

9. This Agreement shall be construed according to Arizona law.

IN WITNESS WHEREOF, the parties have executed this Agreement through their authorized representatives below:

PP WELLNESS,
an Arizona non-profit corporation

CITY OF GLENDALE,
an Arizona municipal corporation

By: 
Paul Perez, its President

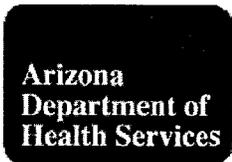
By: 
Its: Assistant City Manager

ATTEST:


Pam Hanna, City Clerk (Seal)

APPROVED AS TO FORM

By: 
Craig Tindall,
City Attorney



ARIZONA DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM

DOCUMENTATION OF COMPLIANCE WITH LOCAL JURISDICTION ZONING

TO BE COMPLETED BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION
IN WHICH THE PROPOSED DISPENSARY IS LOCATED.

Name of Individual or Entity Applying for a Dispensary Registration Certificate: PP Wellness Center, an Arizona non-profit corporation			
Physical Address of Proposed Dispensary: 8160 West Union Hills Drive, Suite A-106			
City: Glendale	County: Maricopa	State: AZ	Zip Code: 85308
Legal Description of the Property:			
Name of Local Jurisdiction: Glendale			

There are no local zoning restrictions for a proposed dispensary at the above location.

OR

The location of the proposed dispensary is in compliance with local zoning restrictions related to where a dispensary may be located. Pursuant to preliminary order and settlement of lawsuit.

PLANNING DIRECTOR
TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION

Jon M. Froese
PRINTED NAME

(623) 940-2800
TELEPHONE NUMBER

Jon M. Froese
SIGNATURE

05.22.12
DATE SIGNED



May 22, 2012

Branden Orr
PP Wellness Center, An Arizona Non-Profit Corporation
3304 W. Malapai Drive
branden@brandenorr.com

RE: Request for a Dispensary Facility Reservation (MM11-02): PP Wellness Center, An Arizona Non-Profit Corporation Located at 8160 West Union Hills Drive, Suite A-106, Glendale Arizona

Dear Mr. Orr:

Your application dated May 10, 2012, requesting zoning clearance for a Medical Marijuana dispensary facility, PP Wellness Center, An Arizona Non-Profit Corporation to be located at 8160 West Union Hills Drive, Suite A-106, Glendale, Arizona has been conditionally approved. This facility will be licensed by the Arizona Department of Health Services. This reservation will expire on July 10, 2012, unless an extension of time is filed in writing with the Planning Department prior to the expiration date.

The property is zoned C-2 (General Commercial), and a Dispensary facility is permitted in this zoning district, subject to certain conditions. These conditions are as follows:

- A. No Cultivation is located on a lot within 5,280 feet (one mile), measured by a straight line in any direction, from another cultivation, dispensary, or infusion site;
- B. Where legally required, the facility is licensed by, Certified by, approved by, registered with, or under contract with a Federal, State, or local government and evidence of such is provided to the Planning Department within sixty (60) days of approval of the Planning Department;
- C. The location of the facility has been reviewed and approved by the Planning Department; and,

An administrative record of each facility shall be maintained with the Planning Department. This record requires current information including licenses be provided by the applicant.

This Zoning Authority Clearance is based on our current understanding that this facility is intended for the sole use of medical marijuana. Any changes to the use or the operation of the facility are subject to further review by the City of Glendale.

Your registration with the City of Glendale and the reservation of this property for a Cultivation facility is not complete until we receive a copy of the State of Arizona license/certificate and copy of the Certificate of Occupancy. Once your reservation is complete, a current copy of the license must be submitted to the Planning Department on an annual basis in order to maintain your status as a legally operating medical marijuana facility.

We will reserve this property in your name subject to the above conditions. This tentative approval is valid for 60 days from the date of this letter. If you are unable to acquire the necessary license within this time period you may request an extension of time in writing to the Planning Department. In order to qualify for the extension, you must provide evidence that work is continuing with either the licensing agency or the City of Glendale. Otherwise, the reservation shall become null and void. You may reapply for the facility and pay the appropriate filing fees. However, there is no guarantee that the facility will be approved at this location.

Please note that a City plan review is required to ensure compliance with building and fire codes including fire alarm systems, exit improvements and other similar items. Our Development Services Center staff is available to help you through this process. You may call them at (623) 930-2800 for further information.

Please call me at (623) 930-2597 if you have any questions.

Sincerely,



Remigio Cordero
Planner
Planning Department

RC/mc

cc: PV Union Hills L.L.C
P.O. Box 12726
Scottsdale, Arizona 85267
Tabitha Perry, Assistant Planning Director
MM11-02 File